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UNITED STATES OF AMERICA.









HAND BOOK
OF
PATENT LAW
FOR
PATENT OWNERS.

BY
CHAS. B. MANN,
PATENT ATTORNEY AND COUNSELOR.

SECOND EDITION—REVISED



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NOTE.

The citations of authorities given in the following pages are confined, for the most part, to those found in the OFFICIAL GAZETTE of the United States Patent Office, published weekly ; the number of volume and page is given, where the full decision may be found—(marked for instance, 11 O. G., 551.) This source, for full information concerning patent decisions, is more readily accessible to inventors than any other.

Persons desiring the full decision in any of these Patent suits, can procure copies of same through

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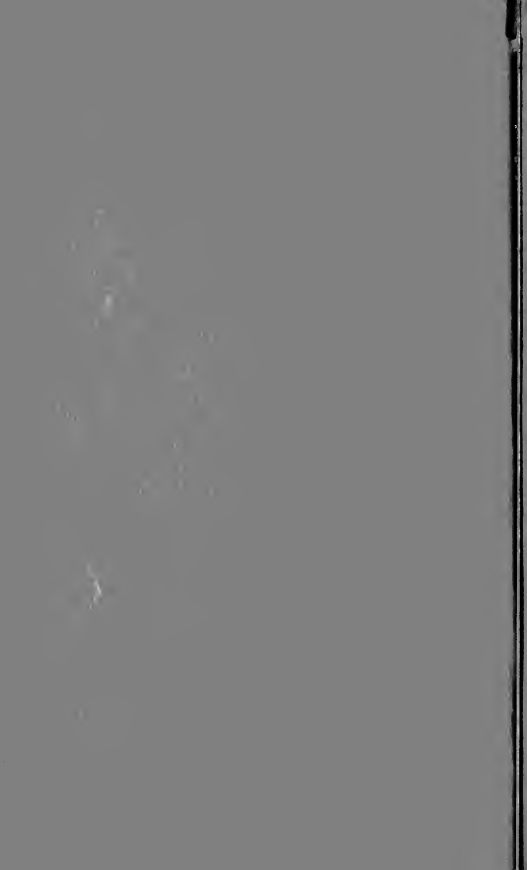


INTRODUCTION.

Inventors and other persons interested in Patents are constantly experiencing the need of information and advice as to their rights under the law; questions, new to them, are daily arising, which they find difficulty in solving.

This little work has been prepared for them—the endeavor being constantly made to state the law in a clear and simple manner, thus adapting it more especially for practical business men than for lawyers. The patent statutes form the basis of a distinct department of law, in which no lawyer, however able, is competent to advise unless he has given it particular attention. While it has been the aim to correctly present the law bearing on the subjects that are most important to rightfully understand, it is quite possible that some technical inaccuracies may have been made; but it is believed persons interested in Patents will here find reliable information in regard to the law and the latest judicial decisions that will enable them to comprehend their rights and the remedies that are available for an invasion thereof.

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THE PATENT SYSTEM—

Of the United States is based upon article 1, section 8, of the Constitution, which says :

“The Congress shall have power * * * * to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.”

It must be admitted the statesmanship and far-seeing sagacity of the fathers of our republic was strikingly manifested in their appreciation of the value of new inventions. With promptness and skill they met the new necessities that had arisen by setting a premium upon inventions, by securing to inventors a property-right in the fruits of their creative genius.

The wisdom of their course has been demonstrated by the fact that in much less than one hundred years of Patent-law encouragement, the inventors of the United States alone have done more to promote the power and prosperity of mankind than all the rest of the world accomplished during many previous centuries.

AN INVENTOR'S RIGHTS.

It would be an unprofitable and unnecessary task to go into a discussion of the question of man's *natural* property in his own original ideas. It is sufficient to

recognize the fact that as long as these new ideas are locked up in his own breast they are likely to be of little benefit to himself and certain to be of none to others. To be of use they must, as a rule, be disclosed ; and when once disclosed, they can be protected as individual property only through the medium of positive law.

A learned judge said : “ An inventor has no right to his invention *at common law*. He has no right of property in it originally. The right which he derives is a creature of the statute and of grant, and is subject to certain conditions incorporated in the statutes and in the grants. If to-day you should invent an art, a process, or a machine, you have no right at common law, nor any absolute *natural* right, to hold that invention for seven, ten, fourteen, or any given number of years, against one who should invent it to-morrow, without any knowledge of your invention, and thus cut everybody else off from the right to do to-morrow what you have done to-day.”

Judge Swayne, in giving a decision of the U. S. Circuit court for the Northern District of Ohio, at the April term, 1874, said : “ Inventors are a meritorious class of men. They are not monopolists in the odious sense of that term. They take nothing from the public. They contribute largely to its wealth and comfort. Their patents are their title-deeds, and they should be construed in a fair and liberal spirit to accomplish the purpose of the laws under which they are issued.”

The right of the patentee is different from the right which any other property owner has ; the invention is not a physical thing which he may stand over and watch, but depends entirely on the law for protection.

A PATENT IS A CONTRACT.

The entire system of protecting new inventions by letters patent is declared by the courts to rest upon the same principles as a contract. The public, acting through its representative, the Government, says to the inventor, "give us new and useful improvements in the useful arts, and we will pay you for them ; not in cash down, (for we cannot at first tell the value of an invention,) but by giving you or your legal representative, for a certain specified time, an exclusive chance to make money out of it," This, in simple English, is the sum and substance of the patent law.

PATENT BENEFITS vs. PATENT BURDENS.

Under this head will be briefly considered the two sides of the Patent question, so far as the Patent system promotes or retards the onward progress to a higher civilization.

Of course, complaints and criticisms have been directed against the Patent laws and their administration, some of them perhaps measurably just, since an absolutely perfect system is hardly to be looked for, but most of them, it is believed, fallacious, and arising from a misapprehension of the true principles of the law.

But there are many earnest and honest men who, misunderstanding the nature and effects of Patents for useful improvements, are opposed to the system and whose antagonism has been made manifest in unmistakable terms.

PATENTS NOT AN OPPRESSIVE MONOPOLY.

The opposers have apparently such a superficial view as not to distinguish the difference between a temporary Patent privilege and an oppressive monopoly.

A monopoly in its legal and odious sense, implies the taking away of some right from the many, for the benefit of particular individuals.

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When a powerful corporation, by crooked devices, obtains a large share of the public domain, *that* may be an "odious monopoly," for the lands which had once belonged to the people are taken from them without due recompense. But when a person, instead of appropriating what was previously known or used, *creates* new property, then that newly-created property should, by common consent, belong to him. Manifestly, then, the term "monopoly" is not applicable to letters-patent for new inventions; that cannot be *taken from* the public, which the public has not; a new invention can become public property, only by communication from the inventor; until so communicated voluntarily, it remains the secret property of the latter.

This view of the case shows that it is just and right that a new and useful invention should be *paid for by the public*, in proportion to its proven value to the public.

A Patent simply protects the inventor for a limited time in the possession of what, but for him, would have had no existence. The principle is the same as that which protects all property, except that the inventor has less protection than any other person who *creates* it.

A COMPARISON.

The following comparison, for the most part, appeared in the columns of a well-known scientific journal:

But, it is objected, on the part of some that the owners of Patents have been and are unduly favored

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in the struggle for existence. They have been too much protected, to the grievous injury of the users of their inventions, particularly the agricultural classes.

Let us see : A young man determines to be a farmer, he strikes out West for the public lands and clears a farm. For the work so done, or for a merely nominal payment, the general government grants him a section of land. The grant is absolute and for all time. Meanwhile another young man is devoting his energies to perfecting some useful device. He succeeds, and the general government gives him the right to make and sell his invention—for all time? No; but for a period of seventeen years only. It may be that the invention is so important and useful that, before the life of the Patent expires, the inventor has amassed a noble fortune; but when the Patent expires, the invention becomes common property—free for every man to use.

Let us see how our pioneer farmer has fared meanwhile; The title made out, the land is his to use or let alone as he will. He can let it lie unproductive, not merely for seventeen years (like an undeveloped Patent), but for any time he may choose; and he can keep anyone else from cultivating it except on such terms as he may dictate. His monopoly is, then, fully as complete while it lasts as a patentee's, *and it lasts forever*. Suppose he has made a happy selection and has chosen a valuable site for water power, or that the land is found to contain precious metals, or that it happens to be where a great commercial centre is destined to be located. He, unlike the inventor, has

added nothing to the world's wealth, yet purely through the necessities of others he may gain great wealth by what is called the natural rise in value of real estate, and the law defends his title.

Thus it is seen the patentee's monopoly is limited, and in a few years his invention becomes public property, whereas the landowner's monopoly is perpetual.

The worst possible cases of patent "oppressions" are trivial compared with the burdens which rising communities have had to bear through speculations in land. Shall we say therefore, that private ownership of land is injurious and ought to be abolished? Or, because the great landed fortunes have not fallen to the working pioneers, that the land laws of our country have not encouraged emigration or hastened the development of the country?

BENEFITS THAT ARE ACCRUING.

The history of this country, as impartially read to-day, shows that it is to the inventor more than to the farmer that our progress is due—to men like McCormick, of reaper fame, who have spent their days and nights, and their money, in developing new machines which have become a blessing to the world.

Under the operation of our Patent law the manufacturers of this country are steadily and surely laying the foundation for a large export business to all parts of the world.

Sir William Thomson, one of the English Commissioners to our Centennial Exposition, (1876), went home and in plain words told his countrymen in authority

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that unless European countries speedily amended their Patent laws they must understand that they would lose their manufacturing supremacy, and that the United States would take it from them.

It has been truthfully said that a peculiarity of our Patent system is, that it is not for the capitalist, not for a favored class, but is for everybody; it opens a career to whoever has talents to seize it, anyone having the capacity may reap the reward.

HOW IT WORKS IN OTHER COUNTRIES.

Switzerland has never had a Patent law, and notwithstanding her population of artisans, has not contributed one great invention to the world in two hundred years; and, were it not for improvements which they have appropriated from countries where Patent laws exist, her manufacturers would be as stereotyped as the manual methods she employs. It is said that the Swiss Commissioners to our Centennial Exposition went home almost in despair at our progress in the arts which hitherto they had excelled in; and recognizing our Patent system as the wonderful stimulus, at once recommended to the Swiss Federal Council the adoption of a Patent law.

Holland stands alone as the country which has abolished Patents. This occurred in 1869. "Such a land as Holland," says an American writer, "exists nowhere else. It is not merely the most singular of kingdoms, it is the only one of its kind. You may travel the world over and yet be unable to form any

conception of the Netherlands. You may live there your life long, and form no adequate idea of the remainder of the globe,

“It is not at all unlikely that among a people so conservative and self-satisfied as the Hollanders, Patent laws did not promote industry. The people, though robust, brave and industrious, appear to have a horror of innovation, as is attested by their obstinate adherence to sleighs, in place of wheeled vehicles, for drawing heavy loads over rough pavements, and the wooden shoes still worn by both men and horses.

“It may be very true that the Dutch Patent law did not promote the progress of the useful arts in Holland ; but the Dutch law was so restricted and selfish in its character that it would scarcely be expected to promote any public advancement in the arts, one of its clauses being to the effect that a native forfeited his patent *if he secured his invention in any other country.*”

The opposers of Patent laws may be referred to the example of Holland, a country where old methods are preferred, where progress is unknown, where the limited manufacturing interests are at a standstill, and the prominent products are gin, tulips and cheese.

Undoubtedly the soundest Patent law is that which treats inventors with the most liberality, on the plain grounds that the more liberal the law the more it is likely to answer its public purpose of promoting the progress of the useful arts, by inducing the production and disclosure of new inventions.

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OUGHT THE PATENT LAW TO BE CHANGED?

Under the guise of amendments looking to the correction of real or pretended evils in the working of the patent laws, Congress is annually beset with bills that would practically nullify the most beneficent features of the patent system.

All sorts of excuses are given for the proposed legislation, which is generally suggested either by the urgency of private interests, by aggrandizing corporations, or the narrow-minded views of demagogues; the public good is seldom at the bottom of these propositions to amend the Patent Laws.

To lessen in any way the stimulus which the law gives by protecting patentees and manufacturers under patent rights, is to strike at the very heart of the system as a means of encouraging useful inventions. If inventors cannot enjoy the fruits of their labors in this direction, they will naturally turn their thoughts into other channels, and that would be equivalent to a suspension of all progress in American arts, and our speedy decadence as a manufacturing nation. And seeing how largely our agricultural interests are bound up with and dependent upon our manufacturing interests, it is obvious that our pre-eminence in this field also would not be long sustained, if our inventors were to lessen their efforts.

If our national industrial prosperity is to continue, we must have new inventions; and to get new inventions we must pay for them. Everything that is worth having must be paid for; and the payment

that is made to an inventor in the shape of a Government Patent is the fairest of all payments,—not only so, but it is the cheapest possible way for the people to become possessed of the advantages resulting from better means and methods.

It will be well for our legislators not to forget that not only must there be an inducement for the inventor to continue to originate, but there must be also an inducement for the capitalist to devote his money and business capacity to the development and manufacture of new inventions. Without the security which a patent affords, capitalists would refuse to put their means in a new invention.

Patents invite capital. By a poor man's invention *and* capital, a division of labor and labor-saving machinery can be adopted, and without these economical production is impossible.

The Patent system of the United States is doubtless the best in the world, and ought not to be materially changed.

THE PATENT LAW.

(The sections here numbered refer to the U. S. Revised Statutes adopted June 22, 1874).

ESTABLISHMENT OF THE PATENT OFFICE.

Sec. 475. There shall be in the Department of the Interior an office known as the Patent Office, where all records, books, models, drawings, specifications and other papers and things pertaining to Patents shall be safely kept and preserved.

RESTRICTIONS UPON OFFICERS AND EMPLOYEES.

Sec. 480. All officers and employes of the Patent Office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any Patent issued by the office.

COPIES OF RECORDS, &C., OF PATENT OFFICE.

Sec. 892. Written or printed copies of any records, books, papers or drawings belonging to the Patent Office, and of letters patent authenticated by the seal and certified by the Commissioner or Acting Commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor, and paying the fee required by law, shall have certified copies thereof.

PRINTED COPIES OF SPECIFICATIONS AND DRAWINGS OF PATENTS.

Sec. 894. The printed copies of specifications and drawings of patents, which the Commissioner of Patents is authorized to print for gratuitous distribution,

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and to deposit in the capitols of the States and Territories, and in the clerk's office of the District Courts, shall, when certified by him and authenticated by the seal of his office, be received in all courts as evidence of all matters therein contained.

WHO MAY OBTAIN PATENTS.

Sec. 4,886 provides: "That any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor."

It is first to be noticed in this section that the term "any person" includes citizens and aliens—males, females and minors—who in reference to the patent laws stand upon precisely the same footing.

"By the law of New York a married woman may own property of every description in the same manner as if she were a *femme sole*, and under the U. S. Revised Statutes, suits in equity for infringement of Letters-Patent must be brought by the party in interest in his or her own name, and such right cannot be delegated to others to bring suit in their own names when the suit is not in any way for their benefit. Therefore, the husband, having no legal interest in the patent or the suit, is neither necessary nor a proper party to be joined."

Lorillard vs. The Standard Oil Co., 17 O. G., 1507.

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WHAT IS PATENTABLE.

1. A new process or method relating to any of the industrial arts.
2. A machine, tool or implement, or any improvement of the same.
3. A new article of manufacture, or an improvement.
4. A composition of matter or an improvement.
5. A new design of an ornamental character.

WHAT IS NOT PATENTABLE.

Patents are not granted for an effect or a result, that is, a single Patent will not be granted for *all ways of producing a certain result*, to do so would be to grant a Patent for the "principle" in the sense of an elementary physical law or fact; a Patent, then, cannot be obtained for the function or abstract effect of a machine.

Patents are not granted for any thing that has a noxious or hurtful tendency, or which would be injurious to the morals, health or good order of society.

"A Patent will not be sustained if the claim is for a result, a principle, an idea, or any other mere abstraction."

Fuller & Barnum *vs.* Yentzer & Scates, 11 O. G., 551.

WHAT IS INVENTION..

Merely conceiving the idea of an improvement or machine is not an "invention" or "discovery." The invention must have been reduced to a practical form either by the construction of the machine itself, or by such disclosure of its exact character that a mechanic.

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or one skilled in the art to which it relates, can and does construct the improvement, before it will prevent a subsequent inventor from obtaining a patent.

“To constitute an invention or discovery, as defined by the Patent Office and the Courts, the idea must be embodied in a practical form.”

McCullough vs. Watkins, 8 O. G., 1074.

“Mere change of material used in the construction of devices is not invention; it is only the exercise of mechanical judgment, and hardly adds enough to the domain of knowledge to raise the person to the dignity of an inventor who first thought of making such a change.”

Putnam vs. Yerrington, 9 O. G., 689.

“Whenever a change or device is new and accomplishes beneficial results, the Courts look with favor upon it. The new result is evidence of invention.”

Birdsell vs. McDonald, 6 O. G., 682.

“The simplicity of an invention may constitute its great excellence and value.”

Pennock appl. from Com., S. C. D. C., 5 O. G., 668.

“It is no new invention to use an old machine for a new purpose.”

Roberts vs. Dyer, 10 O. G., 204.

“When adaptation is required to secure a new result by applying an old device to a new use, invention is presumed, and the new organization may be patentable.”

Levi Stevens, 1 O. G., 223.

“Slight changes sometimes effect surprising results, and may change the operation of an old machine so as to adopt it to a new and valuable use not known before, and to which the old machine could not be applied without those changes. If by the change a new result is produced, it may be patented.”

Seymour vs. Osborne, 3 Fisher, 555.

Pearl vs. Ocean Mills, 11 O. G., 2.

“ A person assumes the role of an inventor when he has devised the means whereby his ideas are to be made available to the public.”

Wicks *vs.* DuBois, 11 O. G., 244.

“ A difference in form which is productive of new and useful results cannot be said to be a matter of fancy, or the exercise of mechanical skill, but *such* a difference is invention.”

Eppinger *vs.* Richey & Boniface, 12 O. G., 714.

“ A patent for a process irrespective of the particular mode or form of apparatus for carrying it into effect, is admissible under the patent laws of the United States.”

Tilghman *vs.* Proctor et al. 19 O. G. 859.

REDUCTION OF INVENTION TO PRACTICE.

The right and title of a patentee, who being himself a *bona fide* original inventor having published the invention by obtaining his Patent, cannot be destroyed by the fact that some one else had a prior conception of the idea, ending in experiment, and never reduced to that practical shape in which alone it can be useful to the public.

“*Conception*” of an invention has been held to take date from the first placing on record, or communication to another person of such a description as would have enabled one skilled in the art to put it in execution.

An invention is construed to be “*matured*” either by complete description in a patent, or in an application for patent, or by such public use as would have

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worked abandonment if it had occurred more than two years prior to the application for patent.

The law on the subject has been formulated as follows :

“ Before an invention can be considered as having been so “ reduced to practice ” as to give its author, without further effort on his part, an irrefragable title to it, it must have been embodied in a practical working machine, capable of being operated to perform its intended functions for business purposes. If not capable of such embodiment, it must have been brought to an equivalent state of perfection in some other way. (For instance by procuring a patent.) Upon this point there is no conflict in our judicial tribunals.”

“ A patentee who is first to conceive an invention, first to make a model, the first to apply for a Patent, and the first to obtain the grant, is not required to have put his invention to practical use.”

Busha vs. Phelps & Edmunds, 9 O. G., 1010.

“ If the one who first conceives the invention is diligent in applying for a Patent, he will be entitled to priority as against one later to conceive but first to reduce the invention to practice.”

Freeborn vs. Foye, 9 O. G., 884.

“ The phrase “ reduce to practice,” does not import the bringing of the invention into use ; when used in reference to an invention it means the putting of the invention in such form that it *may* be used, thus demonstrating it is no mere theory.”

Heath vs. Hildreth, Cranch Patent Dec., 96.

“ Where one is first to conceive an invention, but throws aside all evidence of the conception, makes no effort to introduce it to the public, and delays making application for a patent for several years after another

has brought it into extensive use, he has no standing as an inventor."

Hart vs. Little, 7 O. G., 962.

"No doctrine is better settled than that the subsequent inventor who perfects his invention and adapts it to use, (that is, "reduces it to practice,") while one prior to invent is unreasonably delaying, is, in contemplation of law, the first inventor and entitled to a patent for the invention."

Lay vs. Wiard, 9 O. G., 350.

FOUR IMPORTANT THINGS.

Sec. 4920.—In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove, on trial, any one or more of the following special matters :

First.—That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect ; or,

Second.—That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same ; or,

Third.—That it had been patented or described in some printed publication prior to his supposed invention or discovery thereof ; or,

Fourth.—That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented ; or,

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Fifth.—That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.

A consideration of the matters set forth in the second, third, fourth and fifth defenses under this section will be particularly instructive, since they are applicable with equal force in a contest before the Commissioner to obtain a patent, or before the Courts to defeat one.

REASONABLE DILIGENCE.

When an interference is declared in the Patent Office between two opposing applicants, the rights of the contesting parties are decided by the Examiner of Interferences upon testimony taken by the respective parties.

The point to be adjudged is “priority of invention.” The general rule is that he is the first inventor who has first *perfected* and *adapted* the invention to use.

But this rule is subject to the qualification that he who first invents: *i. e.* mentally originates, shall have the prior right, if *he were using reasonable diligence in adapting and perfecting* the invention.

“When, after making a model, the inventor took no further steps for several years, although able to apply for a patent, and another in the meantime obtained a patent, the first party must be held to have been wanting in diligence.”

Hammond *vs.* Laird, 7 O. G., 170.

“An inventor cannot safely let his invention rest in an incomplete state simply because he meets difficulties at the outset; he is not thereby excused from

using all reasonable diligence in his endeavors to surmount such impediments and perfect the invention."

Barnes vs. Clinton, 9 O. G., 1158.

"The diligence required of the one first to conceive in order to make out a superior title to the invention as against one first to reduce the same to practice, is an absolute and not a relative matter, and must be shown to be reasonable under the circumstances."

Millward vs. Barnes & Barnes, 11 O. G., 1060.

"As between applicants for a Patent, in a case of interference, the question of "reasonable diligence" only arises where one conceives the idea of an invention first and the other is first to reduce it to practice."

Allen vs. Gilman, 2 O. G., 293.

"If nothing is shown in the evidence to account for an inventor's delay in reducing his invention to practice, he must be held chargeable with want of diligence."

Hovey vs. Hufeland, 6 O. G., 31.

"Mere delay in applying for a Patent after the invention has been perfected, will not (alone) warrant a judgment of priority in favor of a subsequent inventor."

Traut vs. Hawley, 10 O. G., 979;

PRINTED PUBLICATION.

A prior patent for, or printed publication of, a similar thing is the best possible evidence of want of novelty in an invention, and a *foreign* patent or printed publication is equally effective with a domestic one. In either case it is a record, accessible to the public, of the prior existence of the invention claimed by the applicant or patentee as original with himself. But to bar an application or invalidate a patent, a prior patent

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or printed publication, whether domestic or foreign, should set forth the invention so clearly and intelligibly that a properly skilled person could, guided by such description, and without any trials, experiments or addition of his own, construct or put in practice the invention; and it, when so constructed or put in practice, must embody the same principle of operation and produce the same result as the alleged invention, or such prior publication will not be held to be a legal anticipation. Mere vague suggestions of something similar will not suffice.

“A prior description of a part cannot invalidate a patent for the whole.”

Westinghouse vs. G. & R. Air Brake Co., 9 O. G., 538.

“A pattern book, without any descriptive matter contained in it, cannot be regarded as a printed publication, such as is contemplated in the Revised Statutes, as being a bar to the issue of a patent.”

Ex-parte Atterbury, 9 O. G., 604.

PRIORITY OF INVENTION.

Sec. 4904. Whenever an application is made for a Patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired Patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a Patent to the party who is adjudged the prior inventor, unless the adverse party appeals from the decision of the primary examiner, or of the board of examiners-in-chief, as the

case may be, within such time, not less than twenty days, as the Commissioner shall prescribe.

How often it happens that after some person has made a valuable invention, and obtained a Patent therefor, people are heard claiming to have made the same invention long before; even if these pretenders are truthful, and their imaginations have not been called on to supply the deficiencies of their memory, they never reduced the invention to practice, nor made it known to the world, they are not, therefore, meritorious inventors.

The question of prior invention comes up for discussion before the Patent Office oftener than in the United States Courts.

The proceeding technically known as an "interference," is a test suit instituted for the purpose of determining the question of *priority of invention* between two parties claiming the same patentable subject-matter.

"He is the prior inventor, and is entitled to the Patent for an invention, who first embodies it in a complete, practical, working utensil, and exhibits it to the public, though another afterwards reduces it to practice, and applies for a Patent before him."

Rice *vs.* Winchester, 3 O. G., 348.

"If an inventor, after making two secret experiments, takes no further steps with his improvement for five years, when he applies for a patent, and another, meanwhile, has reduced it to practice and put it in the market, what the first has done will be regarded as abandoned experiments, and the other party will be adjudged the prior inventor."

Lippman *vs.* Marchant, 4 O. G., 320.

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“If an inventor, after making a model of his device, kept it in his office and took no further steps with it for upwards of four years, and another in the meanwhile originated it and introduced it largely into the market, the latter is to be held the prior inventor.”

Bradford vs. Corbin, 6 O. G., 223.

“If the party who first conceived a machine followed up the idea diligently, and was the first to reduce it to actual practice, he is entitled to a patent for it, although his competitors had complete working drawings of it previously prepared, and obtained a patent.”

Rees vs. Richards & Berry, 7 O. G., 37.

“He is the inventor, entitled to the protection of the Patent Law, who is first to complete the invention and publish it to the world, and not he who confines the knowledge of it to his closet.”

Arnold vs. Wilcox, 7 O. G., 558.

A GOOD PRECAUTION.

As an inventor is liable, either before he obtains his patent or after it issues, to be called on by the Commissioner of Patents in a case of “interference,” to show the date of his invention, he should be able by some reliable evidence to show this date. The following plan will generally serve the purpose:

As soon as your ideas of an improvement have taken definite shape and form, make a sketch showing the same on paper, and if satisfied of its practicability and that it will serve the desired purpose, you should then make more careful drawings of it, showing plainly the various parts in detail, and write a brief but clear description of its construction, by which a mechanic would be able to make one.

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Having done this to your satisfaction, you should now proceed to have a model made, and at once apply for a patent. But if for any reason you are not ready to file an application for a Patent, then you should take the necessary steps to enable you to establish the date of your invention. One plan to this end is to take the drawings you have made, and call on two or three of your most trustworthy friends or acquaintances, and let them examine the drawings until they fully understand them.

Upon a portion of the same sheet on which the drawings are made, and to which the description is attached, write a certificate something like the following :

ELMIRA, ILLINOIS, *March* 10, 1868.

This is to certify that we have carefully examined the drawings and description on this sheet of an Improvement in Wash Boilers, and understand its construction and mode of operation, and that Mr. David O. Smith claims it as his invention.

WM. R. MATTHEWS,
JOSEPH B. WILLIAMS,
JOHN RICHARDSON.

ANOTHER PRECAUTION.

The value of an accurate record of an invention covering the entire period of its development cannot be over-estimated. It is often of great value, even after a patent is granted. It fixes the date of invention, shows whether the inventor has exercised due diligence in perfecting his invention, and is an unimpeachable witness in cases of interference or any other litigation that may arise.

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SPECIMEN FORM OF RECORD.

NAME OF INVENTION.

.....*Wash Boiler*.....

WHEN CONCEIVED,

.....*Monday, March 1, 1868*.....

FIRST DRAWING OR SKETCH MADE.

.....*March 2, 1868*.....

TO WHOM SHOWN, AND WHEN AND WHERE,

Wm. R. Matthews, March 3, 1868, at his shop.

FIRST MODEL OR EXPERIMENT MADE

.....*March 6, 1868*.....

TO WHOM SHOWN AND WHEN,

Jno. B. Williams and John Richardson, March 10, 1868.

THE FOLLOWING IS A DESCRIPTION OF MY IMPROVED

.....*Here Describe*.....REFERENCE BEING MADE BY LETTER TO THE
ANNEXED SKETCH......*Here Make Sketch*.....Baltimore, Md.

TWO YEAR'S PUBLIC USE.

Public use is a use, not *by* the public necessarily, but any use—though it may be only limited—in public, so that there may be *public knowledge* of the thing for more than *two* years.

The law allows an inventor to put his invention in use and on sale for a period *not exceeding two years* prior to his application for a Patent therefor, without being liable to the charge of abandonment.

The question as to whether the invention was in use *for profit*, is of vital importance.

An inventor has a right to put his invention in practice, (not on sale) even for a number of years, so long as that is done, not for profit, but with the *purpose* and *intent* to perfect or test the invention.

“Where an invention has through the acts or by the acquiescence of an inventor, gone into public use for more than two years, his right to it is forfeited beyond recall.”

Jones *et al.* vs. Sewall, 3 O. G., 630.

“A Patent cannot be defeated by a single machine when the recollection of the mechanism that constituted it has passed away from the mind of the witness who deposes to its existence a number of years before, so that it cannot from such recollection be reconstructed, and there being no other record of it.”

Taylor vs. Wood, 8 O. G., 90.

“The experimental use of a machine more than two years before filing an application does not affect the right to a Patent.”

Chambers & Mendham vs. Duncan, 10 O. G., 787.

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“There is an obvious distinction between a public use or a use by the public, and an experimental use in public. Many inventions can be tested only in that way.”

Locomotive Truck Co. vs. Penn. R. R. Co., 6 O. G., 927.

“A single instance of sale, purchase or use under the circumstances specified in the section, will render the Patent void.”

Con. Fruit Jar Co. vs. Wright, 6 O. G., 327.

Egbert vs. Lippman, 21 O. G., 75.

ABANDONMENT OF APPLICATION.

Sec. 4894. All applications for Patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable.

Applications for Patents which are abandoned or which lapse under the two years limit provided in this section, may subsequently be revived, or a new application filed, upon payment of the office fee as in original applications.

ABANDONMENT OF INVENTION.

After Application.

Sec. 4897. Any person who has an interest in an invention or discovery, whether as inventor, discoverer, or assignee, for which a Patent was ordered to issue upon the payment of the final fee, but who fails to

make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a Patent for such invention or discovery the same as in the case of an original application. But such second application must be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a Patent was ordered to issue under such renewed application prior to the issue of the Patent. And upon the hearing of renewed applications preferred under this section, abandonment shall be considered as a question of fact.

Down to November 29th, 1881, it was the practice in the Patent Office to treat all applications which had been "allowed," and on which the final fee had not been paid, and no renewed application had been made, as *forfeited*. The application was treated as forfeited, and the invention described in the application was also treated as forfeited as against the applicant therefor.

In all such cases, as far as the applicant was concerned, *the invention was regarded as dead*. On the date named, a case was decided by the Commissioner of Patents which changed this practice, and now Patents may be obtained by filing a new application, no matter how much time has elapsed since a former application was "allowed."

"Applications for patents will be hereafter examined without reference to former applications forfeited and abandoned by operation of section 4897, Revised Statutes."

“To overcome in such cases any presumption arising under Section 4886, Revised Statutes, that the invention was in public use prior to the filing of the former application, applicants will be required, before the issuance of their patents, to furnish affidavits showing that the invention has not been in public use more than two years prior to the filing of their later applications.

The doctrine may now be considered as well established that the abandonment of an *application* is not of itself proof that the applicant has abandoned his *intention*, and the presumption arising therefrom to that effect is overcome when the applicant has manifested his intention of further prosecuting his invention by filing and prosecuting an application for a patent.

Ex-parte Livingston, 20 O. G., 1747.

Where the application is forfeited by reason of non-payment of final fee within six months, the invention may still be secured by a Patent by filing a petition for the renewal of the same application within two years after date of allowance.

Before Application.

An invention may be abandoned *at any time* prior to application for patent. But the law does not favor a presumption of the abandonment of an invention, except in the case of public use or sale for more than two years.

“If an alleged prior invention was only an experiment, never perfected, but abandoned, it cannot prejudice a Patent for a similar improvement obtained by a subsequent inventor.”

Brown *vs.* Guild, 6 O. G., 392.

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“A Patent will not be set aside upon the mere testimony of a single witness that many years ago he saw a machine like the one described ; it must be regarded at most as an abandoned experiment, no second machine having been known.”

La Baw et al. vs. Hawkins et al. 6 O. G., 724.

SKILLED AID TO PERFECT AN INVENTION.

There can be no doubt that an inventor is entitled to the aid, counsels, and experiments of experts or scientific men, and to the suggestions of skilled mechanics, in reducing his invention to practice, without forfeiting his right to the title of inventor.

It is perfectly clear that an inventor may derive his information by which he is enabled to prosecute his experiments successfully, either from books or from consultation with skilled mechanics.

Mr. Justice Clifford in delivering the decision of the Supreme Court of the United States, at the October term, 1874, in the case of the Union Paper Collar Co. *vs.* Isaac Van Deusen, *et al.*, reported in 7 O. G., 919, said

“Where a person has discovered a new and useful principle in a machine, manufacture, or composition of matter, he may employ other persons to assist in carrying out that principle ; and if they, in the course of experiments arising from that employment, make discoveries auxillary to the plan and preconceived design of the employer, such suggested improvements are, in general, to be regarded as the property of the party who discovered the original principle, and they may be embodied in his Patent as part of his invention. Doubt upon that subject cannot be entertained.

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But persons employed as much as the employers are entitled to their own independent inventions; and if the suggestions communicated by the persons employed constitute the whole substance of the improvement, the rule is otherwise, and the Patent, if granted to the employer, is invalid, because the real invention or discovery belongs to the person who made the suggestions."

RIGHTS OF EMPLOYER AND WORKMAN.

Where, in the absence of any specific contract, a man makes an invention in the time of his employer, using his tools and materials in experiments and construction, this fact would be regarded evidence that the improvement was *intended* to be for the benefit of the employer.

But when a workman himself suggests and invents an improvement, without previous direction from his employer, the invention belongs to the workman, and the employer has no claim thereon, although the device may have been made in the shop of the employer, with his tools, and during time belonging to him.

A party who merely states that a certain article is wanted for a certain purpose, cannot obtain a patent for the article if it is prepared by another.

To entitle the party to set up the claim of inventor, the suggestions he makes must embrace the plan of the improvement; they must relate to the specific arrangement so that a properly skilled person, without the exercise of any ingenuity on his part, may be able to construct and put the improvement in successful operation.

“No presumption arises against a workman that an improvement which he makes belongs to his employer, when he was employed to do specified work and not to embody an invention of his employer.”

Holman *vs.* Foley, 2d Com. Dec., 97.

Whiting *vs.* Graves, 13 O. G., 455.

“Persons are not deprived of the right to their inventions while in the service of others, unless they have been hired and paid to exercise their inventive faculties for their employers.”

“A contract by which one person agrees to pay a sum of money for the time, labor, and skill of another for a given period, gives the employer no right to an assignment of a patent that is issued to his employee for an invention made during the period of his employment.”

Hapgood *et al. vs.* Hewitt, 21 O. G., 1786.

JOINDER OF INVENTORS.

Whenever an invention is the joint product of several minds, a patent must be applied for by *all the inventors*, and if a patent for such an invention is taken by any number of such inventors less than the whole number, such patent is void.

It is sometimes difficult to determine whether an invention is joint or single, but, when two or more persons are engaged together in making an invention, such invention is joint, and the courts will not go into all the details of the case, although one or the other of the persons must have been the first to suggest this or that part, or the whole of the invention.

The rules of practice of the Patent Office provide that

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“Joint inventors are entitled to a joint patent; neither can claim one separately; but the independent inventors of separate and independent improvements in the same machine cannot obtain a joint patent for their separate inventions, nor does the fact that one man furnishes the capital and the other makes the invention entitle them to make application as joint inventors.”

“If one originates the general idea of an improvement, and another aid him in developing it and reducing it to a practical form, they may be considered joint inventors.”

Chase et al. vs. Chase, 4 O. G., 4.

“It is well settled that if two inventors are on equal terms in respect to the invention, and both contribute to the essential parts of the organization regarded as a whole, the patent would be invalid if issued to one of them.”

Carter & Dwyer vs. Perry & Dickey, 8 O. G., 518.

EXECUTOR AND ADMINISTRATOR.

Sec. 4896. When any person, having made any new invention or discovery for which a Patent might have been granted, dies before a Patent is granted, the right of applying for and obtaining the Patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his lifetime; and when the application is made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them.

“ A Patent granted to the administrator or executor of an inventor is held by him, *prima facie*, in trust for the heirs, it is valid although the trust is not expressed on the face thereof, because the law creates the trust.”

N. W. Fire Ex. Co. *et al. vs.* Phila. Co., 6 O. G., 34.

“ The Patent Law directs the mode in which assignments of patents are to be made and where such shall be recorded ; an administrator does not acquire any right or authority in relation thereto by State laws, he must be governed by the U. S. Patent Law. He may sell the patent or any part of the right, as administrator, the same as any other personal property of the estate. Should there be more than one administrator, an assignment might be made by one alone which would legally convey the whole interest in the patent.”

Brooks *vs.* Jenkins, 3 McLean, 432.

Wintermute *vs.* Reddington, 1 Fisher, 239.

“ An administrator of a patentee residing in one State may commence an action in the U. S. Circuit Court of another State without taking out new letters of administration in the State where the suit is brought.”

Smith *vs.* Mercer, 5 Penn. Law Jour., 531.

DESIGN PATENTS.

It is assumed that a sufficiently accurate understanding exists as to the nature of patents on a process, a machine, a manufacture and a composition of matter, but as the scope and import of design patents are not so generally understood, it may be well to consider them briefly.

Sec. 4929. Any person who, by his own industry, genius, efforts and expense, has invented and produced any new and original design for a manufacture, bust,

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statue, alto-relievo, bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impressions, ornament, pattern, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may, upon payment of the fee prescribed, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor.

Sec. 4933. All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this title, shall apply to patents for designs.

It should be understood that patents of this class are entirely distinct from ordinary patents. The latter relate to new machines, devices, manufactures, and compositions of matter; while patents for designs relate to shape, configuration, and ornamentation.

It is the *appearance* given to any object by a design which constitutes the real essence of a design patent; that appearance may consist in the shape or configuration, and without regard to how it is produced.

The law manifestly contemplates that giving new and original appearances to a manufactured article may enhance its saleable value, may enlarge the demand for it, and may be a meritorious service to the public.

The Supreme Court of the United States, in regard to the infringement of design patents, says:

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“ If in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, and is sufficient to induce him to purchase one supposing it to be the other, the one first patented is infringed by the other.”

Gorham Mf'g Co. *vs.* White, 2 O. G., 592.

“ A name sign with an imitation gold pen attached to it constitutes a proper subject for a design patent.”

Ex-parte Fairchild, 3 O. G., 323.

“ The same degree of originality is required in both design and functional patents—that is, the claim must not comprehend alone what is already in existence.”

Ex-parte Niedringhaus, 8 O. G., 279.

“ The novelty of the design may consist in the form outline, or grouping; in others, in the use, combination, arrangement, or harmony of colors; in others, in the combination of some or all of these attributes.”

Richardson *vs.* Miller. 12 O. G., 3.

COMBINATIONS IN INVENTION.

An invention may be a specific thing, or a combination of specific things. In a just sense that is a combination which requires different things to be brought together to accomplish the given result.

A combination may be valid and proper though all the parts which compose it are old when separately considered. But merely bringing old devices into juxtaposition, and there allowing each to work out its own effect without the production of something novel, is not combination.

A patent for a combination can only be proved invalid by showing that all the elements thereof had

been used together before, and in the same relation to each other.

It will be observed that all depends on the result produced—if the effect or result of the arrangement is new and beneficial, it will be regarded as a meritorious invention and worthy of a patent.

The general rule is the element of a combination must co-act,—that is the parts which comprise the combination must co-operate in producing a result.

“A combination in mechanism must consist of distinct mechanical parts, having some relation to each other, and each having some function in the organism.”

“When a new combination is made bringing about a new result, it is patentable.”

Hawes vs. Washburne, 5 O. G., 491.

“If the several devices composing the combination are old, the patent to the combination may be valid, but the patentee cannot deprive others of the right to use the devices separately or to use them in other combinations, or to use some of them in combination, omitting others.”

Hailes vs. Van Wormer, 7 Blatchford, 443.

“A combination of old ingredients is not infringed unless it appears that the alleged infringer made or used the entire combination.”

Storrs vs. Howe, 10 O. G., 421.

EQUIVALENTS IN A PATENTABLE SENSE.

An equivalent in mechanics is a specific thing that does something or effects something in substantially the same way as the thing for which it is substituted ; it is a mere substitution of one mechanical power for another, or one obvious mode for another of affecting

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a like result ; as generally understood, one thing is an equivalent for another if either one may be adopted instead of the other—the result or effect produced being the same in both cases.

The distinction between an “equivalent” and a mere “colorable evasion” has never been precisely determined ; “equivalents” may be said to be a term that embraces “colorable evasion,” the latter being simply a kind of *mechanical dodge* resorted to by those who seek to “get around a patent.”

Of course, if a thing is substituted for another that produces a useful result which the other is incapable of, it is not an equivalent.

“The use of an equivalent may infringe a Patent even if in some respects it is an improvement on the original patent.”

Woodward *vs.* Morrison, *et al.*, 2 O. G., 121.

“Equivalents are such ingredients or things as will perform the same function as the one described or shown, and which were well-known at the date of the Patent as proper substitutes for the ones described in the Patent.”

Storrs *vs.* Howe *et al.*, 10 O. G., 421.

“If anyone uses all the elements of a patented combination except one, and, instead of that, employs *what was known at the date of the Patent* to be a proper substitute for the omitted element, he is liable for an infringement of the Patent, But he is not liable if he uses any other substitute, even an old one, *which performs a different result.*” Nor is he liable if he uses a substitute which is itself a new thing.

Gill *vs.* Wells, S. C., 6 O. G., 881.

Seymour *vs.* Osborne, 11 Wallace, 876.

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“ Mere colorable difference or slight improvements cannot protect an infringer.”

Odiorne vs. Winkley, 2 Gallison’s Rep., 54.

“ A device is the equivalent of one that is patented if it performs the same function in the same way and produces the same result, though it may be of a different form and bear a different name; and the use of such will be an infringement.”

Westlake vs. Cartter, 4 O. G., 336.

“ The substitution for one part of the operating mechanism, of a combination the equivalent of that omitted, does not avoid an infringement.”

Robertson et al. vs. Blake, S. C., 11 O. G., 877.

REISSUE OF DEFECTIVE PATENTS.

Sec. 4916. Whenever any Patent is inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the Commissioner shall, on the surrender of such Patent and the payment of the duty required by law, cause a new Patent for the same invention, and in accordance with the corrected specification, to be issued to the patentee, or, in the case of his death or an assignment of the whole or any undivided part of the original Patent, then to his executors, administrators, or assigns, for the unexpired part of the term of the original Patent. Such surrender shall take effect upon the issue of the amended patent. The Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee

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for a reissue for each of such reissued letters patent. The specifications and claim in every such case shall be subject to revision and restriction in the same manner as original applications are. Every Patent so reissued, together with the corrected specification, shall have the same effect and operation in law, on the trial of all actions for causes thereafter arising, as if the same had been originally filed in such corrected form ; but no new matter shall be introduced into the specification, nor in case of a machine patent shall the model or drawings be amended, except each by the other ; but when there is neither model nor drawing, amendments may be made upon proof satisfactory to the Commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

A Patent is not valid if essential information is omitted, or if anything be so scantily, obscurely, or unintelligibly stated that the whole description taken together is not sufficient to guide those skilled in the art to a correct and beneficial use of the invention.

Now it may, and frequently does happen, that an inventor inadvertently omits such reference in his description or claim to some material and substantial part of his invention as would warrant a judicial construction of his patent as covering that part. This, then, is a case where the patent, by reason of a *defective* and *insufficient* specification, is inoperative to give an exclusive right to the *actual* invention. In such event the patentee may surrender his patent and take a new, or as it is termed a reissue patent, upon an amended specification, which shall distinctly specify

and claim the whole of the actual invention *shown*, but not claimed in the original patent.

A patentee cannot insert in a reissue, a description of improvements he has made since his application for the original patent. Such improvements can be secured only by a new and additional patent. The wording and phraseology of the description may be altered as desired, if it is confined to the *same invention* as the original, and if no new matter be introduced. Everything is "new matter" that was not shown in either the original drawings or specification.

There is no limit to the number of times a patent may be reissued if good reason exists therefor. A reissue does not prolong or extend the term for which the original was granted ; it only covers the unexpired part of the original term.

As the *surrender* of an original patent does not take effect until the *issue* of the amended patent, if application for the latter be refused and withdrawn, the original remains in force.

A patentee, cannot after reissue, recover damages, by a suit based on the reissued patent, for infringement *done prior* to the reissue.

"A surrender of a patent, for the purpose of reissue after a decree or judgment in a suit has been rendered, has no effect upon the right to the damages passed previously into judgment. Such damages must be paid, the patentee's right thereto rests on his decree and not on his patent."

Mevs *vs.* Conover, S. C., 11 O. G., 1111.

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Prior to the year 1881, a certain license had long prevailed in the matter of enlarging the scope of claims by reissue, and to this many evils are traceable. In its decision of the case of "*Edward Miller & Co. vs. The Bridgeport Brass Company*," the Supreme Court took a stand in opposition to the practice of re-issuing for the purpose of securing larger or expanded claims *after* any considerable or unexplained delay. The decision is an important one, and may be found in full in Vol. 21, O. G., page 201.

DISCLAIMER.

Sec. 4917. Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, his Patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may on payment of the fee required by law, make disclaimer of such parts of the thing patented as he shall not choose to claim or to hold by virtue of the Patent or assignment, stating therein the extent of his interest in such patent.

A disclaimer, is, when filed, to be considered as a part of the specification, in considering the rights of the party filing it. It may strike out one or more clauses of claim, or it may modify all or a part of the claim, and, when there is but a single clause of claim, it may modify that.

A disclaimer may be filed by the owner of the whole patent, or the owner of a Territorial right, and effects

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the rights only of those who join in it, though an assignee or grantee would take the rights and position of his assignor or grantor. The disclaimer must state the interest in the patent held by the party disclaiming.

“Matters properly disclaimed cease to be a part of the invention, and render the Patent the same as if such matters had never been included.”

Dunbar & Hopper *vs.* Myers *et al.*, 11 O. G., 35.

PURCHASER'S RIGHTS BEFORE PATENT ISSUES.

Sec. 4899. Every person who purchases of the inventor, or discoverer, or with his knowledge and consent constructs any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, or vend to others to be used, the specific thing so made or purchased, without liability therefor.

The terms of this section *exclude* from its benefit those who may, prior to application for patent, have constructed or applied the invention, in defiance of the inventor's right, or without his consent or knowledge.

MARKING ARTICLES “PATENTED.”

Sec. 4900. It shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by affixing thereon the word “patented,” together with the day and year the Patent was granted; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is inclosed,

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a label containing a like notice ; and in any suit for infringement, by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make use, or vend the article so patented.

The penalty imposed by the statute for a failure to mark patented articles is only the *taking away of the right to recover damages* in the suit. It does not affect the right to an injunction, either perpetual or provisional, as a remedy.

FALSELY MARKING ARTICLES PATENTED.

Sec. 4901. Every person who, in any manner, marks upon anything made, used, or sold by him for which he has not obtained a Patent, the name or any imitation of the name of any person who has obtained a Patent therefor, without the consent of such patentee, or his assigns or legal representatives ; or

Who, in any manner, marks upon or affixes to any such Patented article the word "Patent" or "Patentee," or the words "Letters Patent," or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee, or his assigns or legal representatives ; or,

Who, in any manner, marks upon or affixes to any unpatented article the word "Patent" or any word importing that the same is Patented, for the purpose of deceiving the public, shall be liable, for every such offense, to a penalty of not less than one hundred dollars, with costs; one-half of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offense may have been committed.

The purpose of this section is to prevent the public from being deceived. The offence is committed if the act is done with an intent to deceive. The action for the recovery of the penalty may be brought at any time within five years after.

THE RIGHTS OF A PURCHASER OF A PATENT ARTICLE.

When a patented machine or article *passes by sale*, and without limitation into the hands of a purchaser, it is no longer under the protection of the Patent Law. A bona fide purchaser of a patented article lawfully made and sold, may use or sell the article anywhere in the United States, without regard to who may be the grantee or owner of the territorial right where it is desired to use the article.

An interesting case showing that restrictions may be imposed, is the "American Cotton Tie Company" who sold bale ties; the metal buckles of which were branded with the words "*Licensed to use once only.*"

On a suit brought by the Company against S. W. Simons, the U. S. District Court of Rhode Island, June Term, 1878, decided against the Company, and held,

"Though the words "*Licensed to use once only*" were stamped upon the buckles, and words of like import were contained in the bill-heads and invoices, the nature of the article and of its use are such that there is an implied parting with the unrestricted title at the time of sale which is inconsistent with any such reservation or limitation."

13 O. G., 967.

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In another suit brought by the Company against Bullard, the U. S. District Court of New York, Sept., 29, 1879, decided in favor of the Company, and held

“That such sale on the part of the defendants was an infringement of the patents.”

“The words “*licensed to use once only*,” stamped upon each buckle, was notice to everyone who handled it that there was attached to it a restriction in the shape of a license, and of a license to use only once.”

17 O. G., 389.

Here, then, were two District Court Decisions at direct variance.

The Company took an appeal in the first case to the U. S. Supreme Court, which, November 6, 1882, decided, *reversing* the decree of the lower court, and giving judgment for the Company.

The Supreme Court held the words stamped in the buckle to be a limitation on the use of the article, and that a second use of it was an infringement of the patent.

22 O. G., 1976.

“The article having been purchased from one rightfully authorized to sell it, it may be taken by the purchaser wherever he desires, his title to it is absolute and unconditional.”

McKay *vs.* Wooster, 3 O. G., 441.

Mitchell *et al.*, *vs.* Hawley, 3 O. G., 241.

“A patented machine or article is personal property and in the hands of a purchaser is subject, like other property, to state taxation.”

Bloomer *vs.* McQuewen, 14 Howard, 539.

“The purchaser of a patented article who buys from the patentee, or from any other person by him au-

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thorized, acquires an absolute title to the same, and may deal with it in the same manner as if dealing with any other kind of property."

Adams vs. Burks, 1 O. G., 282.

THE GOVERNMENT MUST PAY FOR A PATENT.

"A patent is private property, and the government cannot after it is issued make use of the improvement any more than a private individual without license of the inventor, or making him compensation."

Cammeyer & Lewis vs. Newton et al., 11 O. G., 287.

James vs. Campbell 21 O. G., 337.

"The invention secured by letters patent is property, and as such is entitled to the same protection as any other property. Private property cannot be taken for public use without just compensation, except in cases of extreme necessity, in time of war or of immediate and impending public danger."

Brady vs. The Atlantic Works 10 O. G., 702.

ANNULING PATENTS.

Isaac Van Hagen, of Chicago, Ill., obtained a Patent for an improvement in "Machine for punching and stamping Metals." April 25, 1871, No. 114,068. On June 26, 1871, Fred M. Huntington filed an application for a Patent for the same identical machine. An "interference" was declared and it was established by proof that Huntington was the real inventor, and that Van Hagen had pirated the invention and surreptitiously procured the Patent; accordingly the Commissioner granted a Patent to Huntington, thus putting him on a footing with the first and illegal patentee.

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Thereupon Huntington brought suit in equity in the U. S. Circuit Court, for the Northern District of Illinois. The decree of the court was rendered October 2, 1873, and was that

“The letters patent, No. 114,068, issued to the said defendant. Isaac Van Hagen, be, and the same is hereby revoked, vacated, and declared null and void, and of no effect,” and “that the said defendant Isaac Van Hagen, do, within sixty days from the date hereof surrender and deliver up to the clerk of this court, the said letters patent,” and the same shall be canceled and transmitted to the Secretary of the Interior, Washington.

“The practice that obtains in England as to the mode of procedure for the cancelation and annulling letters patent by *scire facias* does not obtain in this country.

“No statute of the United States confers or recognizes the existence of any such right, nor can any precedent be found for the suing out of a writ of *scire facias*, or the bringing of a bill in equity to repeal or cancel the patent by the Attorney-General, in the name and behalf of the United States, either with or without a relator.”

The Attorney-Gen'l. *vs.* The Rumford Works, 9 O. G., 106.

DECLARING PATENTS INVALID.

Sec. 4918. Whenever there are interfering patents, any person interested in any one of them, or in the working of the invention claimed under either of them may have relief against the interfering patentee, and all parties interested under him, by suit in equity

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against the owners of the interfering patent ; and the court, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall effect the right of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment.

The power of decreeing the invalidity of patents is one of the chancery powers of the courts of the United States.

Consequently where there are two or more patents for the same thing, (of which only one of course can be valid), the matter of invalidity can be authoritatively ascertained and decreed only by a Court of the United States having jurisdiction of such questions.

“ A bill in chancery has become established as the appropriate proceeding for vacating a patent from the Government.”

Mowrey *vs.* Whitney, S. C., 1 O. G., 499.

CAN A PATENT BE ATTACHED FOR DEBT

“ A patent is an incorporeal right existing as a whole throughout the United States, and cannot be attached or sold on execution for a debt of the owner.”

Stephens *vs.* Gladding, 17 Howard, 447.

“ A court of equity may direct the sale of the interest of an inventor in his patent in order to satisfy a judgment obtained against him in a court of law, the writ of execution having been returned *nulla bona*,

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and for that purpose will require the patentee to make an assignment of the patent, as provided in section 4898, of the Revised Statutes of the United States, and in default of such assignment within a limited time will appoint a trustee, with authority to execute the same."

Murray *vs.* Ager, *et al.*, 20 O. G., 1311.

The above decision was made at the January Term, 1881, of the District of Columbia Court, and was affirmed by the Supreme Court of the United States, March 6, 1882, as follows :

"A Patent may be subjected by bill in equity to the payment of a judgment debt of the patentee."

"The decree below, appointing a trustee to execute an assignment, if the patentee should not himself execute one, being clearly within the chancery powers of the court, affirmed."

21 O. G., 1107.

"An assignment of a patent right made by a judge of probate and insolvency under a state law is ineffectual to transfer the title to the assignee without an instrument of conveyance from the debtor."

Ashcroft *vs.* Walworth, 2 O. G., 546.

"A Patent cannot be seized and sold by a sheriff under State laws. If a sheriff gets possession of letters patent by a levy, he merely has the custody, he cannot sell, transfer or convey the right ; he can give no title thereto."

Banker *vs.* Caldwell, 4 Minn., 94.

Stephens *vs.* Gladding, 17 Howard, 447.

Bartlett *vs.* Crittenden, 5 McLeen, 82.

"A patented *machine* may be levied upon and sold by a sheriff the same as any personal property, but such a sale only passes a title to the *material* of which

the machine is made, it conveys *no right to use it as a machine*; should the purchaser so use it he would be liable as an infringer."

Sawin *vs.* Guild, 1 Gallison, 487.

Stephens *vs.* Cady, 14 Howard, 528.

"A Patent may be made available by a creditor for the payment of a debt, by a bill in equity invoking the courts to require the debtor patentee to make an assignment."

Stephens *vs.* Cady, 14 Howard, 528, 530.

From the foregoing it appears that a creditor may proceed against a debtor patentee under a State insolvent law or a United States bankrupt law; but that a sheriff cannot seize or attach a patent, as he might other personal property, under an execution.

A Patent obtained for an invention made *after* an adjudication in bankruptcy, it is thought, would not be subject to *any* legal proceeding based on the old indebtedness.

While a patented *machine* may be seized on an execution and sold for the use of the material of which it is made, the letters patent or the patent right cannot be sold, except when the court compels the patentee to execute an assignment.

SUGGESTIONS TO A PERSON ABOUT TO BUY A PATENT.

In taking an assignment of a patent or a part undivided interest, or a grant of a territorial right, require a warranty to be inserted in the deed as to title, and also, if possible, a warranty as to the validity of the

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patent. In the following form the italics illustrate warranty as to title.

Form 1. Deed of Exclusive Right.

TO ALL TO WHOM THESE PRESENTS SHALL COME.

WHEREAS, Letters Patent of the United States, No. 73,513, for an improvement in Wash Boilers, dated May 16, 1868, was granted to David O. Smith, of Elmira, Illinois, *who is now sole owner thereof, and of all the rights under the same within the territory below recited*, which said rights Thomas Jones, of New Dover, Ohio, is desirous of acquiring;

NOW, THEREFORE, BE IT KNOWN. That for and in consideration of, etc.

Where the purchase is of the Patent and the entire right, title and interest thereunder, a clause might be inserted transferring also all claims or right to damages for infringement already committed.

Another suggestion: do not pay for a purchased Patent, unless you can rely on the grantor, until three months have elapsed after the date of the assignment to you. This precaution is recommended because the law allows three months for the recording of assignments.

A safe way is for the patent owner to execute the deed and deliver it to a third person, who will hold it for three months, and if no assignment of the same right is then found of record the purchase money shall be paid and the deed becomes operative, being placed on record just previous to the expiration of the three months. In law this is called an *escrow*.

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ENFORCING PAYMENT FOR PATENT RIGHTS.

"Equity will enforce a lien for purchase money, but it does not vacate a transfer, because the purchase money has not been paid."

Perkins vs. The Electric Light Co., 24 O. G., 204.

"A void Patent (that is one that has been decreed invalid by a Court), is not a good consideration for a promissory note."

Nye vs. Raymond, 16 Ill., 153.

"If a note is given for a patented machine and the exclusive right to use the same for a certain territory, the patentee is not entitled to anything beyond the value of the machine, if the patent is void."

Earl vs. Page, 6 N. H., 477.

"If a patent right is sold with a warranty as to the practicability of the invention, and the machine or process cannot produce the result warranted, there is an entire failure of consideration, and no recovery can be had on a note given therefor."

Hawes vs. Twogood, 12 Iowa, 582.

"If a note is given for a patent right, and the invention is worthless because the machine cannot be made to work, the note is void for want of consideration."

Cragin vs. Fowler 34 Vermont, 326.

"The mere fact that an invention lacks utility in its application to any one of the several objects for which it is patented, will not prevent a recovery upon a note given for an interest therein."

Midkiff vs. Boggess, 15 Ind., 210.

"A mere assertion by others that the thing patented is an infringement of a prior patent is no defense to an action on a note given by a purchaser of a patent right."

Davis vs. Gray, 17 Ohio, Stat., 330.

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“If the purchaser has assigned his interest in the patent to another, he cannot, in an action by the patentee upon the note given for the right, set up a defense of a failure of consideration.”

Thomas *vs.* Quintard, 5 Duer, 80.

“If the suit is on the covenants in a *sealed* instrument to enforce payment for the right, a good and valuable consideration is implied from the solemn form of the promise in writing and *under seal*, and the invalidity of the patent cannot be set up as a defense.”

Wilder *vs.* Adams, 2 W. and M., 329.

“If the purchaser has derived benefit from the use of the patent; and there is no fraud, and the patent is valid, he has no good defense against a note given for the right.”

Holden *vs.* Curtis, 2 N. H., 61.

“A representation in regard to the durability, salability and cost of articles manufactured according to a patented design, is a mere matter of opinion, and will not vitiate a sale of a patent right even though it is false.”

Miller *vs.* Young, 33 Ill., 354.

“The assignment of an interest in a patent, where there is no fraud, is a sufficient consideration to enable a party to recover on notes given therefor, although the invention may be practically of little or no value.”

Myers *vs.* Turner, 11 Ills., 181, (1855).

A State Law which makes void a promissory note given for a Patent, unless the words “given for a patent right” are written across the face of the note, decided by the Pennsylvania Supreme Court, Judge Sharswood, to be void, and to have no effect—the note is good nevertheless.

Haskell *vs.* Jones, opinion filed at Harrisburg, Pa. March 4, 1878.

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Where the words "given for a patent right" were written in the note as required by the State Law, it was decided they afforded no protection whatever to the drawer of the note, that in a suit brought to recover the amount of the note he could not plead any of the defenses provided by such statute, the same being unconstitutional.

Decision Judge Swing, April, 1877, U. S. District Court, Cincinnati, O.

STATE LICENSE TO SELL RIGHTS.

The law is well settled that Inventors are not required to take out a license anywhere within the limits of the United States, *to sell Rights* under a Patent.

A Patentee or his Agent is free to go into any State and there negotiate a sale of his Patent; he may do this as freely as a man owning a town lot in the city of Washington, D. C., might anywhere negotiate a sale privately of his real estate.

INFRINGEMENT.

Sec. 4919. Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested, either as patentee, assignee, or grantor. And whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

It is an infringement of a Patent to *make* a patented article, to *use* a patented article, or to *sell* the article when made by one unauthorized. The law vests the *exclusive* right in the patentee to do *each* and *all* of these things. A person cannot make for his own personal use without infringing, nor can a person make for exportation to foreign countries without infringing. The intent to infringe is not even necessary, and the patentee need not notify an infringer *before* bringing suit; for the patent is, in the eye of the law, notice of the patentee's rights to all the world.

One thing should be borne in mind when considering a question of infringement, to wit: if the thing claimed is the *first of its kind*, it would of course include all real equivalents in the broadest sense; but, on the other hand, if the thing claimed is simply an

improvement upon something already known for the same purpose, then those things only are infringements which are mere "colorable evasions." The first essential to a proper determination of a question of infringement is to ascertain exactly the scope of a patent. This necessitates a knowledge of the "state of the art" at the date when the patent was issued.

Each case rests upon its own peculiarities. The scope of any Patent is governed by the inventions of prior date, and can only be determined by a careful study of analogous prior patents.

To determine whether a certain article is an infringement of a patent it must be compared separately with each clause of claim in the patent; for if any clause of the claim is infringed, the patent is infringed. The claim is the vital part of a patent, and the question of infringement must be determined upon the claim.*

*We are prepared to advise and assist Patent owners to determine the question, in any given case, as to whether their patent is infringed. Our charge for such service will always be moderate and reasonable.

Information and assistance afforded lawyers in general practice, who may have Patent Causes, touching the validity or scope of particular Patents, and upon questions of infringement..

Having access to all the original patents, models, drawings, public records, and all other accessible documents pertaining to the Patent Office, we are prepared to make examinations and *give written and carefully prepared opinions* upon all infringement questions, together with a digest of other patents bearing upon the case, upon *moderate terms*.

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A person cannot use the patented invention of another for the reason that he has made an improvement on it.

“It is an infringement when a patented device is used for the same purpose for which it is used by the patentee, although it is made to fulfil additional functions.”

Sarven vs. Hall, 1 O. G., 437.

“Claims are to be construed by the state of the art, even though the patent contains no acknowledgement of it.”

22 O. G., 771.

“To constitute infringement there must be—first similarity of design (construction); second, substantial identity of purpose or result.”

Henderson et al. vs. Cleveland Stove Co., 15 O. G., 4.

“To constitute an infringement the thing used by the defendant must be such as to substantially embody the patentee’s mode of operation, and thereby to obtain the same kind of result as was reached by his invention.”

Sewell, adm’r of Clark, vs. Jones et al., 9 O. G., 47.

“The burden of proof is upon complainant to show that the defendant has infringed the patent under which he claims.”

Fuller and Barnum vs. Yenzer, et al., 11 O. G., 597.

Imhauser vs. Buerk, 17 O. G., 795.

“A patentee is not necessarily confined to the precise arrangement in the construction of his machine as specified in the patent.

Bantz vs. Elsas, et al., 6 O. G., 117.

“A patentee is entitled to the exclusive use of the mechanical organization, device or means for *all the*

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uses and purposes to which it can be applied—to the unlooked for as well as to the contemplated.”

McComb *et al.*, *vs.* Brodie, 2 O. G., 117.

Wells *vs.* Jaques, 5 O. G., 364.

Stow *vs.* City of Chicago, 21 O. G., 790.

“If the defendant has incorporated the devices covered by the plaintiff’s patent into his machine, he is liable as an infringer, although it contains other different features.”

Buerk *vs.* Valentine, 2 O. G., 295.

“Defendants treated tobacco in a method similar to the process patented by plaintiffs, except that defendants made use of an equivalent for the gum-arabic used by the plaintiff’s to produce the same effect as that rendered by plaintiffs’ process. Held, that this was infringement.”

Kimball *vs.* Hess, 26 O. G., 107.

WHEN NO INFRINGEMENT.

Anyone is privileged, in making an improvement, to evade a previous patent if he can; but he must not use the devices secured to the patentee. If he invents something new and material, and thus effects the same object, there is no infringement.

“While patents are to be construed liberally, they should not be so construed as to enable patentees to reach out and cover every improvement or invention which, after seeing the same, they conclude they might have embraced within their patent, but which was not so embraced and included.”

Trader *et al.*, *vs.* Messmore, 7 O. G., 385.

“A patented combination is not infringed by a machine in which one of the ingredients is omitted.”

Dunbar and Hopper *vs.* Myers, 11 O. G., 35.

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“ Unless every element embraced in a combination is used, or some equivalent for it, a patent for it is not infringed.”

Brown vs. Hinkley & Cole, 3 O. G., 384.

“ Where the distinguishing feature of a patented device consists alone in its peculiar construction, another which is constructed differently is no infringement of the patent, although it produces the same results.”

Reckendorfer vs. Faber, 5 O. G., 697.

“ A patent for a combination is not infringed unless all the elements enumerated are used, or the equivalents of those which are omitted are substituted for them.”

Westlake vs. Cartter, 4 O. G., 636.

INFRINGEMENT SUITS.

Suits for infringement can only be brought in the name of the owner or joint owners of the legal title to the patent throughout the whole of the United States, or in the name of the owner of the particular territory of the United States in which the action is brought. A licensee cannot bring such an action, except in an equity suit he join with him the party or parties in whom the legal title to the patent is vested within the territory over which the United States Court wherein the action is brought has jurisdiction.

As the patent law now stands, there are two ways for a patentee to recover for an infringement of his rights. He may proceed at law and recover damages, that is, what he has lost by means of the infringement; or he may proceed in equity to recover the infringer's

profits, or the saving affected by the use of the pirated appliance or process.

These two courses are adapted to two entirely different classes of patents, though in many cases the patentee may elect which course he will pursue in case of infringement—both being open to him. Where the value of the patent consists wholly in the right to make and sell the thing patented, the rule of damages is applicable. Where the value of the patent consists wholly in the use of the patented appliance or process, cases of infringement go to courts of equity, and the amount of the patentee's money recovery is measured by the infringer's gains through the infringement. In an action at law the plaintiff recovers actual damages.

“The person who may bring a suit for infringement is only he who owned the patent at the time the infringement was committed. A patentee may, therefore, after he has sold and transferred his patent, bring suit to recover damages for an infringement committed before the patent was sold.”

Moore vs. Marsh, 7 Wallace 515.

“A suit for an infringement committed after the sale and transfer was made must be brought in the name of the assignee.”

Herbert vs. Adams, 4 Mason, 15.

“Recoupment is a matter never pleaded in bar to a suit for infringement.”

Birdsell vs. Perego, 5 Blatchford, 251.

“Where a suit is based upon a contract in relation to a Patent, the violation of the same by the patentee may be availed of by way of recoupment of damages, but not in bar of the action.”

Pitts vs. Jameson, 15 Barb., 310.

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“The clear purport of the provisions of the Revised Statutes relative to suits for infringement of patents is that such suits must be brought in the name of the real and beneficial party in interest.”

Goldsmith *et al.* vs. The American Paper Collar Co., 19 O. G., 192.

“No person can bring a suit for profits or damages for infringement who is not the patentee or such an assignee or grantee as the statute points out.”

Gordon vs. Anthony *et al.*, 16 O. G., 1135.

“In all cases where an assignment does not pass the legal title, and is not absolute and unconditional, or there are remaining rights or liabilities of the assignor which may be affected by the decree, he is a necessary party to the suit.”

Cook *et al.*, vs. Bidwell, 20 O. G., 1083.

“Several patents may be included in the same suit when their subjects are correlative, and the inventions claimed are embodied in the same infringing machine. Demurrer for this cause overruled.”

Nellis vs. The Pennock Manufacturing Co., 20 O. G., 1131.

WHERE SUITS MUST BE BROUGHT.

The Circuit Courts of the United States have original jurisdiction of all suits at law or in equity arising under the patent or copyright laws of the United States and is exclusive of State Courts. This has reference to suits for infringement, to enjoin the use of a patented invention, and to an account and discovery.

“The jurisdiction of the circuit courts in cases arising under the patent laws is not changed by the

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Revised Statutes, and consequently the original cognizance of the circuit courts sitting as courts of equity in patent cases is retained."

Cochrane et al. vs. Deener et al., 11 O. G., 687.

Where the suit is on a contract, and there is no question of infringement, a State Court has jurisdiction, and when such a case is before it properly the validity of the Patent may be incidently inquired into.

"The subject matter of contracts made in relation to patents, where neither the validity of the patent nor its infringement is concerned in the controversy, does not give the courts of the United States jurisdiction. The rights of the patentee under the patent laws of the United States must be directly, and not collaterally, brought in issue to give jurisdiction."

Teas vs. Albright, et al., 22 O. G., 2069.

LIMITATIONS OF ACTIONS.

In ordinary actions at common law brought in United States courts, the statutes of limitation of the State where the suit is brought may be pleaded in bar, but such pleading will not apply to an action (suit) for the infringement of a patent, because the right of action is not at common law, but is under the Constitution and laws of the United States, which clothe the United States Courts with exclusive jurisdiction over the whole subject.

Section 55, Statute July 8, 1870, enacted :

"All actions shall be brought during the term for which the Patent shall be granted or within six years after the expiration thereof."

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But this was repealed, by the adoption of the Revised Statutes, June 22, 1874.

“The Legislature of a state cannot pass an act limiting the time for bringing an action in the Federal courts for the infringement of patent rights.”

Anthony *vs.* Carroll, 9 O. G., 199.

An action at law for the recovery of damages for past infringement of a patent, may be brought after the expiration of the term of the Patent.

“The provisions of Sec. 721, U. S. Revised Statutes apply to Patent cases; by this section State statutes of limitation are applicable to actions at law for the infringement of a patent.”

Hayden *vs.* The Oriental Mills, 24 O. G., 601.—U. S. Dis. Court, R. I.

INJUNCTION.

Sec. 4321. The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby; and the court shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages found by verdict in actions in the nature of actions of trespass upon the case.

Injunctions are either provisional or perpetual. The plaintiff may at the commencement or during the pro-

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gress of a suit ask the court for a provisional injunction to restrain the defendant from infringing during the time the suit is before the court. It is entirely within the discretion of the judge to grant or to refuse a provisional injunction; to warrant the court in the exercise of this power there must have been a long and unquestioned use of the Patent: there must be but little if any doubt as to the validity of the Patent; there must be a serious injury impending or threatened, and the court must be satisfied that the rights of the plaintiff can be protected in no other way.

“The Court will not lend its extraordinary aid, by way of preliminary injunction to any claimant who has encouraged or acquiesced in an infringement of his right, or unreasonably delayed in prosecuting for its violation. Compensation for damages accrued and protection from future damages is all such a complainant is entitled to.”

Jones et al. vs. Merrill & Soule, 8 O. G., 401.

In an application for preliminary injunction, where issues of fact are presented, supported on one side by affidavits, and contradicted by affidavits upon the other side, which thus neutralize each other, a motion for the allowance of such an injunction will be denied.”

Beane vs. Orr et al., 9 O. G., 255.

“An injunction against infringing a patent will be granted only when the patentee shows either that he has recovered a judgment on it in a suit, or that he has used and enjoyed his right under it so long as to warrant the presumption that the public have acquiesced in it.”

Brown vs. Hinkley & Cole, 3 O. G., 384.

“Doubts being entertained whether a patent was

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not invalid for want of novelty in the invention, a preliminary injunction was refused."

Fales & Chipman vs. Wentworth, 1 O. G., 58.

"Where a statute authorizes or prescribes the infliction of a fine as a punishment for a contempt of court, it is lawful for the court inflicting the fine to direct that the party stand committed until the fine is paid, although there be no specific affirmative grant of power in the statute to make such direction."

Fischer vs. Hayes, 20 O. G., 601.

DAMAGES.

Sec. 4919. Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested, either as patentee, assignee or grantee. And whenever, in any such action, a verdict is rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs."

In a suit at law the plaintiff must present evidence to enable the jury to fix the amount of damages, but the damages cannot exceed the amount claimed in the declaration.

In an equity suit the plaintiff does not prove the extent of damage until the court decrees upon the question of validity of patent and its infringement by defendant; then the cause is referred to a master-in-chancery, who takes proof and determines the amount of damages.

The defeated party pays all *legal* cost, but these do not include counsel fees or other expenses incurred.

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"In an action for infringing a patent, the damages are not to be estimated according to what the defendant has made, or might have made, but according to what the plaintiff has lost."

McComb et al. vs. Brodie, 2 O. G., 117.

"In equity, under the existing laws (1876), a complainant can recover both the profits gained by the defendant and the damages lost by the complainant."

Goodyear Dental Vul. Co. vs. Van Antwerp, 9 O. G., 497.

"In an action at law the jury finds the actual damages sustained by the plaintiff. The court has power in such cases to enter judgment for any sum above the amount of the verdict, not exceeding three times the amount of the same, together with costs."

Birdsall and Langtry vs. Coolidge, S. C., 10 O. G., 748.

"In settling an account for infringement the question is not what profits the infringer has made in his business, or from his manner of conducting it, but what advantage he has derived from the use of the infringed invention."

Railroad Companies vs. Turrill, S. C., 12 O. G., 709.

"If the owner of a patent has an established license fee for persons doing the class of business in which the defendants were engaged, the amount of such fee is his loss or damage for the use of the invention by them without a license."

Emerson et al., vs. Simm et al. 3 O. G., 293.

"If the patentee is engaged in manufacturing the patented article for sale, his damage will be manufacturer's profits."

Westlake vs. Cartter, 4. O. G., 636.

"Interest on profits cannot be recovered."

15 O. G., 965.

JOINT OWNERSHIP OF PATENTS.

UNDIVIDED INTERESTS.

So many patents are held and owned jointly by two or more persons that it is an important matter to all persons thus interested to rightly understand the nature of the ownership each person has in the joint property.

In the case of a patent granted to two or more joint inventors, or where an inventor assigns an undivided interest in his patent to others, the nature of such joint ownership may seem plain enough, but it is evident a good deal of misconception exists among inventors as to the *real scope* of the relation that joint owners bear to each other.

The ordinary relation of co-partner, as understood at common law, and as exemplified in the case of two parties trading together as a firm, does not follow as a result of the connection of two or more persons owning undivided interests in a patent.

It has never been judicially asserted that the several part owners of a patent were liable in law to contribute, in the proportion of their respective ownership, to make good a loss sustained by an unfortunate operation of one part owner with his patent privilege.

A PART OWNER

Of a patent may, in the absence of any contract, assign his interest or any fractional part thereof, or he may, either alone or in company with others, purchase or make as many machines as he pleases, and may sell them to others with the right to use or sell them, or he may refuse to sell them, and may rent them ; but he has no power to compel contribution of profits or losses, nor to enforce a partition of the right.

According to the law of partnership all the co-partners are liable, and each must bear his share of any loss incurred by the action of one partner in the usual course of business. But such is not the law of Co-Ownership of Patents.

THE LAW—TENANTS IN COMMON.

When an inventor assigns an undivided interest in his patent—that is, as it were, takes a partner, giving him a fourth or a half interest, as the case may be—he by such assignment divests himself of the *exclusive* right and privilege he before possessed as *sole* owner ; and also he confers on this assignee—now become a part owner—the *same equally full* rights and privileges which the patent granted to him before alone, and thenceforward the rights and privileges of the patent are to be held, enjoyed and *exercised in common* by the two parties ; not that *each* part owner shall share in proportion to his ownership, but that *either* one may freely exercise *all* the rights and privileges secured by the patent. It is common property, to be

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used by both *or by either one* without liability to share his gains, or to account therefor to the other part owner, because in law they are "tenants in common." If three or four parties possess the right of way over real estate—hold that privilege in common—and one does not use the way, he could not compel the others to account to him for their use; thus by analogy one part owner of an undivided patent privilege has as good a right to make, use and sell, and license or permit outside parties to make, use and sell the thing patented as the other. Such parties must be regarded as having interests which are distinct and separate in their nature, though derived from the same instrument; and having the same interests, with the right to use them separately, they cannot, for any legal use of them, incur any obligation to each other. Neither part owner can enjoin or prevent the other from making, using and selling the thing patented.

This view of the subject is sustained by the decision of the Supreme Court of Massachusetts in the case of *Vose vs. Singer*, 86 Mass., 226 (1862).

Clum vs. Brewer, 2 Curtis, 524.

Dunham vs. Ind. & St. Louis R. R. Co., 9 Chicago Legal News, 50.

And a decision by Judge Drummond, of the U. S. Circuit Court, Northern District of Illinois.

"A part owner of a patent has no right to use an infringing device. If he does, he is liable to his co-owner for the wrong done.

When a part owner of a patent sues a co-owner

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for using an infringing device, the recovery, if any, will be in proportion to their respective interests.

He has, by virtue of the joint ownership, a right to use the patent, but he has no right, more than a stranger, to infringe the same."

Herring *vs.* Gas Consumers' Association, 21 O. G., 203.

A DISTINCTION.

A technical distinction respecting the rights of joint owners might be drawn, as where the Patent issues to joint inventors—all being named in the grant—their respective rights would be precisely alike, but where a sole inventor assigns, previous to issue of patent, an undivided one-half or one-third interest, and so named in the grant, it would seem to justify the inference that the proceeds or profits were *intended* to be divided in the same proportion; and in a proper case a court of equity would be likely to sustain this view and require one owner to account to the other on such *specified* basis.

See Pitts *et al.* *vs.* Hall, 3 Blatchford, 201.

One joint owner cannot legally sell or transfer any *exclusive* right; he can give a good title to his own interest but cannot transfer the right of the other joint owner.

A manufacturer holding a shop-right license (not exclusive) from one joint owner, who is one of the original patentees, the proportion of whose interest is, like that of the other patentees, unspecified, is not liable to account to the other joint owners.

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It is unnecessary to enlarge upon the importance of so guarding the common property, that the interest of each joint owner may not become impaired by the business entanglements or unfair acts of the other.

STATE LAWS.

In some of the States, laws have been passed with the view of regulating the sale of patent rights. These regulations have for their object to prevent fraud, and might be enforced if the States had any power to legislate on the subject of patents, directly or indirectly.

The constitution of the United States (article 1st, section 8,) confers on Congress alone the power to pass laws regulating copyrights and patents, just the same as it gives to Congress the power to make laws regulating the postal affairs.

It is well understood that no State has any right or power to interfere with the mails or postoffice matters, because these are national affairs, the exclusive regulation of which was relegated by the States to the General Government. Now United States patents are precisely to the same extent a national matter also, subject only, like postal matters, to the laws and regulations of the General Government.

Previous to the adoption of the Constitution the different States had repeatedly granted patents for inventions. Reference to this is made in the Patent Office report for 1850 ; but since the adoption of the Constitution no one has heard of a State of the Union granting a patent for a new invention. It must be

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clear, then, to the most ordinary comprehension, that States which have passed laws attempting to regulate the sale of patents have done what they had no shadow of right to do, and consequently all State laws designed to regulate the sale of patent rights are unconstitutional, and therefore null and void.

Among the States that have passed these absurd and invalid laws are Pennsylvania, Ohio, Michigan, Indiana, Nebraska, and perhaps other Western States.

The judicial decisions bearing on this question are very conclusive.

DECISIONS.

Circuit Court of the United States—District of Indiana.

Before the Hon. David Davis, one of the Judges of said Court, May 30, 1870. *Case*: Major J. Robinson—Petition for writ of habeas corpus.

The facts in this case were as follows: Robinson was the traveling agent of the owners of a patent granted to Goodyear & Cummings, and was selling county rights under said patent. On the 23d of May, 1870, Robinson offered to sell the right of Grant county to Harrison H. LaFever, a dentist, for \$100, which LaFever agreed to pay. Before the sale was completed the district attorney of the county instituted proceedings against Robinson, under the provisions of a State law, (3 Indiana Statutes, 464), which took effect April 23, 1869. Robinson was charged with not complying with the terms of the law, (selling rights without a license), and was committed to the county jail; thereupon his counsel petitioned the United States Courts at Indianapolis for a writ of habeas corpus.

Judge Davis decided that property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment. If the patentee complies with the laws of Congress on the subject, he has a right to go into the open market, anywhere within the United States, and sell his property. If this were not so, it is easy to see that a State could impose terms which would result in a prohibition of the sale of this species of property within its borders, and in this way nullify the laws of Congress. It is clear this kind of legislation is unauthorized, for it throws burdens on the owners of this kind of property which Congress has not seen fit to impose on them. It attempts to punish a patentee for doing with his property what the National Legislature has authorized him to do, and is therefore void.

Robinson is ordered to be discharged.

“Should the Legislature of a State pass an act in express terms limiting the time for bringing an action in the Federal Courts for infringement of patent rights, there can be no reasonable doubts that such a statute would be unconstitutional and void.”

Anthony *et al.* vs. Carroll, 9 O. G., 199.

Also, Pindar vs. Kelley, S. C. Vermont, Am. Law Reg., September, 1876, 511.

Another decision is given, because in the case decided the question was as to the constitutional validity of the State law, requiring notes given for a patent right to have the words “Given for a Patent Right” written or printed on the face of the obligation.

Huntington Circuit Courts—State of Indiana.

Helm vs. The First National Bank of Huntington.

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DECISION.

Buskirk, J.—This is an appeal from a judgment of the Court below, rendered on a promissory note to which Helm, who was defendant below, pleaded in substance that his said note, the subject of this suit, was given for a patent right, and that said note was invalid and void by reason of not having the words “Given for a Patent Right” inserted thereon, as required by the statute of the State. Third Indiana Statutes, 364.

The second section of the act referred to provides that the words named shall be inserted in the body of the obligation.

The third section provides a penalty, to which any person shall be subject who takes an obligation for a patent right without complying with this requirement.

If the Legislature of this State possessed the constitutional power to enact the law in question, there can be no doubt that a note taken in violation of its provisions would be illegal and void.

The eighth section of the first article of the Constitution of the United States confers on Congress the power “to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

It is insisted by counsel for appellee (the Bank) that the above grant of powers confers upon the National Government the exclusive power to legislate on the subject of patents, and that consequently the Legislature of this State possesses no power to legislate on the subject.

The Federal Government has, continuously, from the adoption of the Constitution down to the present time, legislated on the subject of patents and patent rights. Such legislation has covered the entire ground, for it has not only regulated the manner in which a

patent may be obtained from the General Government but it has prescribed the manner in which such right may be sold and conveyed, and has imposed penalties for the infringement thereof. * * * *

We are of the opinion that the Legislature of Indiana possessed no power to pass the statute under consideration, and it must, therefore, be held unconstitutional and void."

The judgment is affirmed, with costs.

See also the Decision of Judge Swing, of the United States District Court, Southern District of Ohio, and the Decision of Judge Sharswood, Supreme Court of Pennsylvania, referred to in this book under the heading "Enforcing Payment for Patent Rights."

"The act of February 18, 1873, entitled "An act to regulate the sale of patent rights in the State of Nebraska, and prevent frauds connected therewith," is in conflict with the constitution and laws of the United States and is void.

Wilch vs. Phelps, 25 O. G., 981, Supreme Court of Nebraska, Decided March 22, 1883.

It must not be understood, however, that patented articles or machines are exempt from taxation, for they are subject to an impartial taxation on the same basis as other personal property not patented.

"A State may require the taking out of a license for the sale of a manufactured article, and the fact that the article is produced under a patent will not defeat this power."

Webber vs. Virginia, 20 O. G., 369.

"A city ordinance prescribed a tax upon pedlers, etc. The defendant was convicted of selling from door to door, without a license, a patented article. Held, that the patent did not prohibit the municipality from imposing such tax."

People vs. Bussell, 25 O. G., 504. Supreme Court of Michigan, decided January 3, 1883.

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ASSIGNMENT OF PATENT RIGHT.

Sec. 4898. Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States. An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof.

An assignment is an instrument, in writing, conveying either the whole interest in a patent or an undivided part thereof. It is not necessary that the document should be under seal, or that it should be acknowledged. It must convey to the assignee *all* the rights, as to the portion of the patent assigned, which was before vested in the original patentee. These rights are—the right to make, the right to use, the right to vend to others to use, and the right to convey any and all of the first three rights mentioned to other parties. Any instrument which does not convey all these rights is a mere license.

An assignment may be made either before or after the patent is issued, and is equally within the provisions of the law.

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“One holding an assignment or a grant is authorized by the statute to prosecute, in the Circuit Court of the United States, any action that may be necessary to protect his rights under the patent.”

Littlefield and Jagger vs. Perry, 7 O. G., 964.

“Inventions may be assigned before they are patented.”

Cammeyer and Lewis vs. Newton, 11 O. G., 287.

A clause of forfeiture for non-performance, contained in a deed does not reduce the grantee to the position of a licensee, because the title has passed. For non-payment or other non-performance a forfeiture may be enforced in the courts; but until it is enforced the title granted remains in the assignee.

Littlefield and Jagger vs. Perry, 7 O. G., 964.

A grant is an instrument, in writing, conveying the whole right to a patent throughout a specified portion of the United States, and must convey the same rights as an assignment as to the territory specified; otherwise the conveyance is only a license.

A grantee can bring a suit in his own name for infringement, but only in the district owned by him.

If the owner of a territorial right holds his title in the broadest sense, that is, holds “*all* the right, title and interest” which the original patentee held, he may sell the patented article to others, and they (the purchasers) may take the same outside of the grantee’s territory to any part of the United States, and there use the article without liability for infringement. But the case would be different, perhaps, if the owner of the territorial right was restricted in one single

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particular, namely: if the patentee in giving a deed to the right, should insert a clause to this effect—"on the condition that all Wash Boilers (*or whatever the article is*) embracing said patented improvements sold by virtue of this authority, shall be used and sold by the purchasers thereof only within the territory herein named; and that all wash boilers shall have stamped upon them the words "Licensed for use only in the State of Ohio." It is advisable for patentees in all proper cases to insert in the deed to territorial right such a stipulation.

The decisions bearing on this point are

Adams *vs.* Burke, 1 O. G., 282.

McKay *vs.* Wooster, 3 O. G., 441.

See also in this book under the head "The rights of a purchaser of a Patent Article." (Page 53.)

LICENSE TO USE PATENT.

A license is a permit or authority to make, to use, or sell the thing patented, or to do two or all of these three things; and it may be an exclusive right to do all these things throughout the whole United States, and yet not amount to an assignment, unless it include the right to convey all these rights to others. A patent owner may give one person the exclusive right to *make* the patented article in a certain district, or through the whole United States; he may give to another the exclusive right to *use*, and to still another the exclusive right to *sell*; or he may give to different persons a common right to *make*, or to *use*, or to *sell*,

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in a certain territory or throughout the whole United States. Or, if the invention is susceptible of a variety of applications, the patent owner may permit one person to employ the improvement for a stated use, and other persons to employ it for other and different uses.

An inventor enters into a written contract with a manufacturer agreeing to allow him to make and sell his patented article, in consideration of the latter paying a specified sum or duty upon each article when sold. The manufacturer terms this authority his license, and the duty or license-fee is called Royalty.

Licenses may be granted with conditions of any kind attached, such as the payment of a royalty or the use of due diligence in carrying on business under the patent; and if such condition is broken by the licensee the license may be revoked; and, if necessary, he may be proceeded against like any other infringer.

A license is not transferable unless it so expressly states. If no definite term for the license is named, it is revokeable by the maker.

“Any assignment which does not convey to the assignee the entire and unqualified monopoly which the patentee holds in the territory specified is a mere license.”

Sanford et al. vs. Messer, 2 O. G., 470.

“The owner of the exclusive right to use and sell a patented article within a specified territory, but not the right to manufacture, is a licensee, and cannot maintain an action for infringing the patent.”

Hill et al. vs. Whitcomb, 5 O. G., 430.

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“Where a machine was licensed for use in a particular territory: Held, that the use of it, by subsequent purchasers, in territory other than that for which it was licensed, was unlawful.”

Wicks *vs.* Kleinklecht, 7 O. G., 1098.

“If a licensee avails himself of the invention, and the royalty has accrued and is due the patent owner, he cannot set up as a defense for non-payment that the patent is valid.”

Magic Ruffle Co. *vs.* Elm City Co., 8 O. G., 773.

Kinsman *vs.* Parkhurst, 18 Howard, 289.

“A license will not carry the right to any one but the licensee personally, unless there are express words to show an intent to extend the right to an executor, administrator or assignee, voluntary, or involuntary.”

Supreme Court of the United States, Oliver, Finnie & Co., *vs.* The Rumford Chemical Works, decided October 29, 1883.

RECORDING.

The statute *directs* that an assignment or grant shall be recorded within three months from its date.

An assignment or grant is good and valid, as against the assignor or grantor and all other persons, except a subsequent *bona-fide* purchaser for a valuable consideration, not having notice or knowledge of the prior assignment.

If a patentee were to assign his patent to a person who did not, within three months, put the same upon the Patent Office records, and then the patentee should sell the patent to a second purchaser who knew nothing of the prior assignment, and the second purchaser should have his assignment properly recorded, he

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would take a legal title, and the first purchaser would have no interest in the patent; but, if the second purchaser knew, at the time he took his assignment, of the prior assignment, then the second purchaser would get no title.*

A license is not required by the law to be recorded, though the interest of the licensee is best subserved by putting it on record.

The assignee, or the owner of a territorial right, cannot maintain a suit for infringement unless his deed is on the record.

"An unrecorded assignment will prevail over the rights of a subsequent purchaser who takes with notice of the prior assignment."

Ashcroft *vs.* Walworth, 2 O. G., 546.

"In determining to whom a patent shall issue, where assignments have been made, the Commissioner of Patents must be governed by the record."

T. A. Edison, 7 O. G., 423.

*The transfer of *an interest in a Patent*, especially where there are conditions or covenants to be performed by the purchaser, is a matter of importance which makes it clearly to the interest of a Patentee to have the impartial advice of a competent Patent Attorney. The average lawyer, residing in the smaller cities and towns knows but little about the intricacies of patent law, and therefore may not be competent to advise.

Patent Owners wanting advice or assistance, can address us, stating particulars, and at the same time remit us from \$1 to \$5, according to the nature or extent of services required.

MANN & CO.,

PATENT ATTORNEYS,

No. 116 W. BALTIMORE ST.,

Baltimore, Md.

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TRADE MARKS.

The law of trade-marks is a recognition of the principle that no person has a right to use a name, mark or indicia in order to attract for his goods or wares patronage that would otherwise have flowed to the person who first used or adopted the particular mark.

At common law a trade-mark is unlimited in time—it expires only by disuse. It is not for a particular territory—has no boundaries, but is recognized wherever trade and commerce extend.

The act of July, 1870, provided for a system of registry of trade-marks in the Patent Office of the United States, and gave to the owners of trade-marks so registered, certain remedies, legal and equitable, for the unlawful use of the same or similar marks by others. The remedies, also, which trade-mark owners had before the passage of the act, were saved to them.

Trade-marks already in use may be registered.

The statute which provides this system of registry did not undertake to create any new law as to the nature and essentials of trade-mark property. The basis of that property, now, as before the Act, consists in *adoption* of the mark appropriated, and by “adoption” is meant an actual application of the mark, in the course of trade, to the class of goods for which it has been selected. Origination of invention

has nothing whatever to do with the matter; the question of priority in a trade-mark controversy is not who first conceives or designed the mark, or first *intended* to adopt it, but who first *did* adopt it, by applying it to the particular class of goods.

The Act authorizes the registry of "lawful" trade-marks, that is, of marks having those qualities which the law as evidenced in judicial precedents, has recognized as requisite for a proper trade-mark. It is not an easy matter in the space at our disposal to state any general rule for determining the requisites of a lawful trade-mark; it must suffice to say the mark should be arbitrary, with the only purpose of indicating the *origin* or *ownership* of the goods.

The benefit of registry extends to the term of thirty years, and may be renewed for a further term of thirty years.

"When a person permanently ceases to use his trade-mark and consents to its adoption and use by another he relinquishes his right to it."

Kidd & Co. *vs.* Mills. Johnson & Co., 5 O. G., 337.

"A word that is merely descriptive, and used in its ordinary signification, cannot be registered as a trade-mark."

Dundas, Dick & Co., 9 O. G., 538.

"A person has no right to appropriate exclusively a sign or a symbol which, from the nature of the fact it is used to signify, others may employ with equal truth, and therefore, have an equal right to employ for the same purpose."

Pratt and Farmer, 10 O. G., 866.

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"A mark which, although not absolutely identical with, is so close in its resemblance to another as to readily mislead the public, cannot be registered."

Coggin, Kidder & Co., 11 O. G., 1109.

"What degree of resemblance is necessary to constitute an infringement is incapable of exact definition as applicable to all cases. All that courts of justice can do in that regard is to say that no trader can adopt a trade-mark so resembling that of another trader as that ordinary purchasers buying with ordinary caution are likely to be misled."

McLean *vs.* Fleming, Supreme Ct., 13 O. G., 913.

"As an abstract right, apart from the article manufactured, a trade mark cannot be sold, the reason being that such transfer would be productive of fraud upon the public; but in connection with the article produced it may be bought and sold like other property."

Decided February 12, 1884.

Morgan *et al.* *vs.* Rogers, 26 O. G., 1113.

A decision was rendered by the Supreme Court of the United States, November 18, 1879, in the case of *U. S. vs. Steffens*, 16 O. G., 999, in which it was held that the trade-mark statutes of 1870 and 1876, cannot be upheld, being unconstitutional.

On March 3, 1881, a new act of Congress was approved, under which Trade-Marks are now registered in the Patent Office.

LABELS.

Sec. 3. That in the construction of this act, the words "Engravings," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels de-

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signed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints and labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same. (Act of June 18, 1874).

By the word "print," as used in the said act, is meant any device, picture, word or words, figure or figures, (not a trade-mark), impressed or stamped directly upon the articles of manufacture, to denote the name of the manufacturer or place of manufacture, style of goods or other matter.

By the word "label," as therein used, is meant a slip or piece of paper, or other material, to be attached in any manner to manufactured articles, or to bottles, boxes, and packages containing them, and bearing an inscription, (not a trade-mark), as for example: the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, etc.

By the words "article of manufacture"—to which such print or label is applicable by said act—is meant all vendible commodities produced by hand, machinery, or art.

But no such print or label can be registered unless it properly belongs to an article of commerce, and be as above defined.

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This registration remains effective for twenty-eight years, and may be renewed for fourteen years more.

“To effect the valid registry of a print or label under the amendatory act in question, a printed copy of the title of the article to be thus protected, must be deposited at the Patent Office before publication, (before use).

Marsh *et al.* vs. Warren, 13 O. G., 7.

FOREIGN PATENTS.

Sec. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years.

When an invention is of such value as to suggest the propriety of protecting it abroad, it is advisable to mail the papers from this country before the patent has issued here, so as to forestall the acts of pirates who are in the habit of sending printed copies of valuable patents abroad.

“A Foreign patent granted after the patentee files his American application, but before he obtains his American patent, does not limit the term of his American patent.”

17 O. G., *Ex-parte* Mann, 330.

SCHEDULE OF PATENT OFFICE FEES.

All the fees payable to the Patent Office are positively required by law to be paid in advance: that is, upon making application for any action by the Office for which a fee is payable.

The following is the tariff of fees established by law :

On filing every application for a design patent for 3½ years.....	\$10 00
Every application for a design patent for 7 years	15 00
Every application for a design patent for 14 years	30 00
Every Caveat.....	10 00
Every application for a Patent for an invention..	15 00
On issuing each original Patent for an invention..	20 00
On filing a disclaimer.....	10 00
Every application for a re-issue.....	30 00
Every application for a division of a re-issue.....	30 00
Appeal from a primary examiner to examiners-in-chief.....	10 00
Appeal to the Commissioner from examiners-in-chief.....	20 00
On depositing a trade-mark for registration.....	25 00
On depositing a label for registration.....	6 00
For recording an assignment of 300 words or under	1 00
For recording an assignment over 300 words and not over 1,000.....	2 00

ADVERTISEMENT.

While we would abstain from anything like a boastful assumption of superiority, we think we should here say for ourselves, that we have the requisite intelligence, experience and honesty, to qualify us for *rendering first-rate* services in any matter connected with patents.

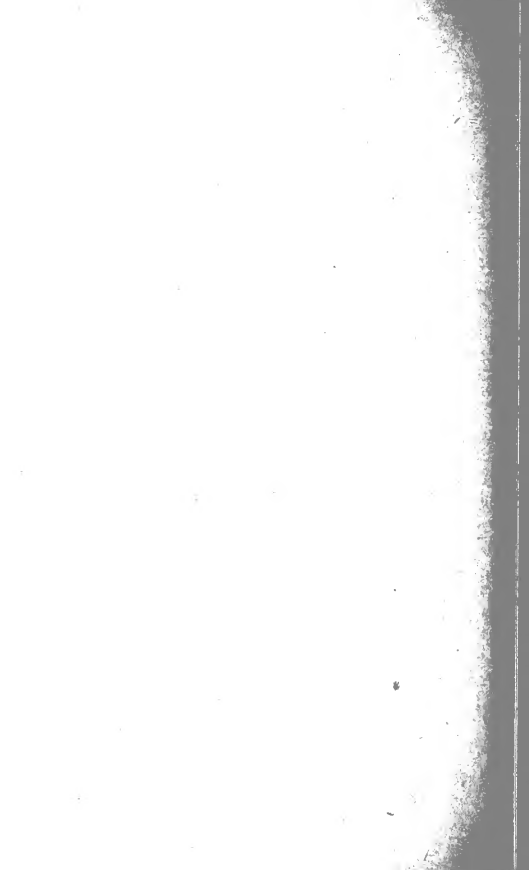
IN PROCURING PATENTS.

We do not pretend to possess "exceptional" facilities at the Patent Office. We do not say we can get patents allowed with broader claims, or in a shorter time than other honest and competent Attorneys; but we do say that we faithfully apply our utmost capacity and diligence *in the interest of our clients*. We do not delegate to clerks that part of the labor in preparing and prosecuting an application for a patent, which calls for the exercise of experience and brains; and, furthermore, our methods have met with conspicuous success. The business at the Patent Office is transacted by Chas. B. Mann, in person,—either by personal interviews with the Officials or by written briefs, or both. We have been able in past years to do this in a way to command the respect of the Patent Office, and to gain the confidence of hundreds of inventors, and our business in consequence has steadily increased. We can assure inventors, therefore, that they may expect of us faithful service and candor in our treatment of their business. We will at any time cheerfully inform persons who do business with us, of the progress of their applications in the Patent Office.

For a statement of our fees and how they are payable, see under heading "APPLICATION," page—

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APPENDIX.



INFORMATION

FOR INVENTORS WHO DESIRE

TO OBTAIN PATENTS.



HOW TO OBTAIN PATENTS.

The Patent Office does not prepare Patent papers, amend imperfect ones, or make models for inventors; those duties must be done by the inventor or his authorized agent. Very few inventors are competent to prepare the drawings and legal documents required by the Patent Office; and even if some possess sufficient knowledge and ability to do so, it is hardly possible for them to meet and successfully surmount the numerous difficulties which often obstruct the application for a Patent. Hence it is advisable for inventors to submit their plans to the inspection of experienced men, who make the solicitation of Patents their profession.

All who have made inventions and desire to consult with us in regard to obtaining Patents are cordially invited to do so free of charge. In all cases they may expect from us a careful consideration of their plans and a prompt reply.

All business, and especially all correspondence regarding a new invention, is held by us strictly secret and confidential.

WHAT MAY BE PATENTED.

New and useful processes, machines and articles of manufacture are patentable; and new and useful mixtures or compositions, medicines, chemical preparations, or new substances useful in any of the industrial arts are patentable.

When the invention relates to the latter class, samples should be furnished, and a full statement of the ingredients or component parts, with the exact proportion of each, and the method of compounding or applying the same should be sent us.

Sometimes it is not necessary to disclose to the Patent Office all the ingredients and proportions, and whenever a valid patent can be obtained without fully specifying this part, we will make it a point to do so.

OUR OPINION AS TO PATENTABILITY.

A pen-and-ink sketch and a description of the invention should be sent. We will immediately answer and

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inform you whether or not your improvement is probably patentable. If we are satisfied that the invention *is patentable*, either wholly or partly, we give the information necessary to apply for a Patent, or file a Caveat. If we find that it is *not* new, we so advise our correspondent, who without expense, is thus saved further trouble. For such consultation and opinion no charge is made.

PRELIMINARY EXAMINATION.

It is often advisable to have an examination made in the Patent Office to find if the invention is *probably* new and patentable. Such an examination we make, including the drawing of the class to which the invention belongs. This is not a warranted search [though we make such for a proper fee] but is a better one than the average inventor could make if personally present in the Patent Office; the chances are at least ninety-nine in one hundred that a Patent can be had if our report is favorable, *but we assume no responsibility on this point*, because the Government Examiners sometimes make erroneous decisions, or a patented invention for a similar purpose is found which partly resembles that of the applicant.

We write the result of our examination, and send sketches of the nearest Patents of a similar character that we are able to find, for which our charge will be \$5; and we will deduct this sum from the amount of our fee for making the application for a Patent on said invention, if a Patent is subsequently applied for.

CAVEATS—A TEMPORARY PROTECTION.

When an Inventor is not ready to at once make application for a Patent, and wants further time to mature or test his invention, he may obtain immediate protection by filing a Caveat, which consists of a petition, oath, specification of invention and drawings. No model required. The filing of a Caveat prevents, during its existence, the issue of a Patent, without the knowledge of the Caveator, to any other person for a similar device. Should a competitor apply for a Patent the Caveator is notified, and called upon to file his application for a Patent within three months from date of notice.

A Caveator is entitled to notice if any application be made for Letters Patent for a like invention, at any time within a year from the date at which his Caveat is filed. He is not, however, entitled to notice of any pending

application which may have been filed before the filing of his Caveat, nor of any application which may be filed after the expiration of one year from the filing of his Caveat, unless the latter shall have been renewed for another year by the payment of a second Caveat fee. A Caveat may be thus renewed from year to year by the annual payment of a Caveat fee. No portion of the money paid for a Caveat applies toward the Patent.

No one can see or obtain a copy of a Caveat without the order of the Caveator. The filing of a Caveat does not prevent others from making, using or selling the invention.

An application for a Patent may be made at any time after filing Caveat, without regard to the term or life of the latter. An inventor need not wait until the Caveat expires.

On filing a Caveat the Patent Office issues an official certificate, which is forwarded to the applicant. The total cost of a Caveat ordinarily is \$20.

If you wish to enter a Caveat, send us a plain pencil sketch, with a description of your invention, and \$10 on account of fees, and we will at once send you all the necessary papers, with instructions how to sign, etc.

MODELS.

The Patent Office rule respecting models is now as follows:

"A model will not be required or admitted as a part of the application until, on examination of the case in its regular order, the primary examiner shall find it to be necessary or useful, and shall file a written certificate to that effect."

When models are furnished for the Patent Office they must be neatly and substantially made of hard wood or metal—if of pine wood, they must be painted or varnished; they should not exceed one foot in any of their dimensions; and must have the inventor's name painted, engraved, or otherwise affixed thereon in a conspicuous and durable manner.

Where the invention consists of an improvement on some known machine, the model only need show the working of the improved parts. A representation of the whole machine in the model in such case will not be necessary.

When a model is filed it constitutes a very important feature in the application, and is worthy of more attention than is usually bestowed upon it, for the following reason:

It is a strict rule of the Patent Office that no *claim* can

be made upon any device, or part thereof, not shown in the model exactly as claimed.

If the model or sample be small and light, it may be sent to us through the mail. The package should contain *no writing*, and must not be sealed *in any way*, only tied with a string. Generally, however, models should be carefully boxed and forwarded to us by express, *charges prepaid*.

A full written description should also be sent with the model, embodying *all the ideas of the inventor respecting the operation and merits of the improvement*. This statement is of great assistance to us in preparing the specification.

Address models,

MANN & Co.,

No. 116 W. Baltimore Street, Baltimore, Md.

Upon sending us the model or drawing, if you desire us to at once proceed with the application, remit \$5 on account of fees, and we will take the case in hand immediately.

DRAWINGS.

The applicant for a Patent is required by law to furnish drawings where the nature of the case admits of them. The drawings must be neatly and artistically executed, according to certain rules prescribed by the Patent Office. Perfect clearness and perspicuity in the drawings are essential to a proper understanding of the specification by the office.

There is no part of the application concerning which the Patent Office is so exacting as it is to the quality of the drawings, none but a skilled draughtsman can make them of the required standard.

The cost of drawings are included in the charges herein named for patent, but if complex and more than one sheet is necessary, the extra sheets may cost \$5.00 each.

APPLICATION.

As soon as we receive the model or a drawing, and description, we proceed immediately to prepare the necessary papers, and when we have them properly prepared, we send them to you for your examination and signature.

If you find them satisfactory, you sign them at the places indicated by pencil marks—your Christian name being written in full—execute the oath before a notary

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public or justice of the peace—the oath must be authenticated by an official seal—then return the papers to us by Mail or Express, with fees, upon receipt of which the papers are filed in the Patent Office.

The application comprises drawings, petition, oath, specification, and the first Government fee of \$15; all to be filed at the same time.

Upon presenting an application to the Patent Office, it is referred to the primary Examiner, who examines it with reference to its novelty and usefulness. If he finds the invention unlike all other devices known or described; or an improvement upon one, and that it is not hurtful, a patent is allowed.

If, on the contrary, any model, drawing, specification, or published description of the same thing be found, the application is rejected.

If the Examiner should for any reason, object to the allowance of all that is claimed, we endeavor to overcome his objections by obtaining a re-hearing and explaining away the points he raises, or amending the specification so as to avoid his objections.

If the examiner, after argument, holds that the claim is too broad, the objectionable portion can be stricken out from the claim without altering the drawing, the Patent will then issue and secure to the inventor all that is patentable.

When an application is allowed, we forward to applicant the *official letter of allowance*, and the final fee of \$20 is then due the Government. The Patent will issue on the third Tuesday after this fee is paid.

ATTORNEY'S FEES.

As already stated, the Government fees are: first \$15; second, \$20; total, \$35. Besides these, there is the Attorney's fee for preparing papers, making drawings and prosecuting the case while it is under consideration by the Commissioner. The Attorney's fee to cover all this service, in an ordinary case, is \$25. This sum added to the total Government fees (\$35) makes the usual cost of a Patent \$60.

There are two plans of paying Attorney's fees, and we accept applications on either plan. The *first plan* is to pay the full Attorney's fee, \$25, at the same time of paying the first, \$15; Government fee, making total \$40. The *second plan* is to pay the Attorney \$5 only, at time of paying the first \$15 Government fee, thus making the cost by this plan to *apply* for Patent only \$20, and when the Patent Office issues the "notice of allowance," then the Attorney is paid the balance of his fee, \$20. By the

first plan, all the Attorney's fee is paid in advance of allowance of Patent; by the second plan, twenty dollars of the Attorney's fee is made *contingent on the allowance of Patent*—that is, \$20 is payable *only* after "notice of allowance" of Patent issues. If no such notice issues then no further fee becomes due the Attorney.

To explain and discuss the relative merits and disadvantages of these two plans of paying the fees of Patent Solicitors would require more space than can be spared in this book. Suffice it to say, we leave the matter optional with each applicant. We will undertake applications for Patents *on either of the above plans* of paying the Attorney's fee.

TIME REQUIRED.

We can generally obtain the allowance of a Patent in four weeks after filing application; we may, and frequently do get them allowed in two weeks, and in other cases it may consume several months time. In regard to this variation as to time required to obtain a patent, much misunderstanding exists.

One inventor may find his case acted on in three or four days after the filing of his application, while his neighbor may become dissatisfied because he has to wait as many weeks and sometimes months for an action. The reason of this is simply because the two applications are for inventions appertaining to different classes, in charge of different Examiners, one of whom may, owing to a press of business, be behind-hand with his work.

An application may be rejected upon reference to some prior Patent, and the Examiner may hold the opinion that the invention is fully anticipated. It must be borne in mind that it is the Examiner's duty to refuse to issue a Patent for anything which is already the property of a prior patentee or of the public; an Examiner is entitled to his opinion, and the best way to overcome his adverse decision is to study the bearings of the references cited, and prepare a careful argument endeavoring to convince him that he has erred in judgment. This course unavoidably *consumes time* but often saves a patent and the expense of an appeal.

PAYING FINAL FEES.

It is advisable, after a "notice of allowance" has been issued, to pay the final fee promptly. All delay in paying this fee *is at the inventor's risk*. All pending applica-

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tions for patents are under the control of the Commissioner, until the letters patent therefor is actually signed, sealed, and delivered. An application is still *pending* although the "notice of allowance" has been issued.

When "notice of allowance" is issued the law says to an Inventor in substance, as follows: "if you choose to delay paying the final Government fee, \$20, you can do so for a period not longer than six months, but every day's delay is at your risk." The "notice of allowance" is no guarantee that the patent *will* be issued to you whenever you pay the fee, if you pay it within six months. The notice means simply this: "at this date you are entitled to a patent. If you pay the final fees *now*, the patent will at once be prepared for delivery, and as soon as it can be printed, signed and sealed it will be delivered to you; but if you avail yourself of any part of the six months which the law allows, *you assume all responsibility for any consequence* which may result from such delay."

Now the possible consequences resulting from delay to promptly pay the final fees are as follows:

First. By delaying to issue the patent, the application of some other inventor to accomplish a similar result, by some other means, may issue before yours, and thus you lose the advantage of having the earlier date.

Second. By delaying to issue the patent another application from an independent inventor for a similar thing may be filed, and in such event your "notice of allowance" would be withdrawn, and an "interference" would be declared, and you would be put to the expense and subjected to the harassment of mind involved in taking testimony to *prove* yourself the *first* inventor. If you are not proven to be the first inventor you will lose the patent.

Third. By delaying to issue the patent, difficulty and litigation may arise by others constructing the machine before the patent issues; and it has been held under Section 4899, that when this was done under the belief that it was authorized, and that the inventor allowed it, such machine might continue to be used after the date of the letters patent.

It is dangerous to delay paying the final fee.

APPEALS.

When an inventor has had his application for a Patent a second time rejected by the Examiner having charge of that class of inventions to which the machine

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or process belongs, the law permits an *appeal*; three appeals are allowed, viz:

First Appeal.—From primary Examiner to the Board of Examiners-in-Chief. Government fee, \$10.

Second Appeal.—From the decision of the Examiners-in-Chief to the Commissioner of Patents. Government fee, \$20.

Third Appeal.—From the decision of the Commissioner of Patents to the Supreme Court of the District of Columbia. Docket fee \$10, and other expenses.

A decision favorable to the applicant rendered by either one of these tribunals, is final.

In case, however, of our being able to obtain the reversal of an unfavorable decision of the Examiner by requesting a reconsideration without making an appeal, we will always do so *free of any further charges* beyond that originally agreed on by us for prosecuting the application; but in case of an appeal from the Examiner being necessary, we will require a moderate fee, proportionate to the extra labor. This fee will be arranged by agreement before the appeal is taken.

INTERFERENCES.

“Are proceedings instituted for the purpose of determining the question of priority of invention between two or more parties claiming the same patentable invention.”

An interference will be declared in the following cases:

First. When two or more parties have applications before the office at the same time, and their respective claims conflict in whole or in part.

Second. When two or more applications are pending at the same time, in each of which a like patentable invention is shown or described, and claimed in one, though not specifically claimed in all of them.

Third. When an applicant having been rejected upon an unexpired patent, claims to have made the invention before the patentee.

The fact that one of the parties has already obtained a Patent will not prevent an interference; for, although the Commissioner has no power to cancel a patent already issued, he may, if he finds that another person was the prior inventor, give him also a Patent, and thus place them on an equal footing before the courts and the public.

Upon the declaration of an interference, each party will be required, before any time is set for the taking of testimony, to file a preliminary statement under oath,

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giving the date, and a detailed history of the invention; showing the successive experiments, steps of development, extent and character of use, and forms of embodiment.

The rules regarding the conduct of interference cases, are of such a character that they cannot be prosecuted without the expenditure of time and money. A timely and candid conference between the contestants, or between their counsel, may sometimes obviate the necessity of litigation.

Our charges for attention to interferences are moderate, and dependent upon the time required.

RE-ISSUE OF DEFECTIVE PATENTS.

Patentees frequently find it desirable to make amendments in the specifications upon which their letters-patent were originally granted, and to obtain *stronger claims*. To effect this the original patent must be returned to the Patent Office with an amended specification, accompanied by a proper petition and oath, a Government fee of \$30, and \$1.50 for a certified abstract of title, and a carefully prepared statement of the particulars in which the original specification was defective, and in what manner the defect arose. Many restrictions are now imposed on the re-issue of Patents. As the amended specification and claims are subjected to a very searching examination, it is very necessary that they be prepared in the most skillful manner. For a moderate fee, applications for re-issue are prepared by us in such a way as best subserves the interest of patentees.

Where a re-issue is granted, the applicant may, in a suitable case, at his option, have separate patents issued for the several distinct parts of the thing originally patented, by paying the requisite additional Government fees, namely \$30 on each. This division of the Patent will also involve additional expense in the preparation of the application.

PATENTS FOR DESIGNS.

It should be borne in mind, that design patents are *not* granted for mechanical inventions, but *only* for the design or configuration of articles where this design or configuration is intended as an ornament. Among the numerous subjects for Patents of this class may be particularly mentioned—castings of all metals, parts of

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machines, household furniture and utensils, glassware, hardware of all kinds, cornices, and other interior and exterior decorations of buildings; also, designs for woven and printed fabrics; dress and upholstery trimmings, and harness. Also the form of bottles, boxes or packages to contain perfumery or medicinal preparations; likewise all works of art, as statuary, busts, compositions in alto or basso-relievo. The Government fee on a design patent for $3\frac{1}{2}$ years is \$10; for 7 years, \$15; 14 years, \$30. No models of designs are required; but duplicate drawings or photographs must be furnished. The specification to accompany the drawings or photographs require to be prepared with great care. Our charge for preparing and prosecuting applications for design patents is \$15.

TRADE-MARKS.

The registration of Trade-marks remain in force for thirty years, and in certain cases can be extended for thirty years more,

A trade-mark is designed for application to goods, wares and merchandise, to designate the person, firm or corporation dealing in or manufacturing the same.

No proposed trade-mark will be received or recorded which is not or cannot become a lawful trade-mark, or which is identical with a trade-mark appropriate to the same class of merchandise, and belonging to a different owner, and already registered or received for registration, or which so nearly resembles the last-mentioned trade-mark as to be likely to deceive the public.

In order to obtain trade-mark protection, we require—

1. The name of the party or firm, (and if a firm, the names of the parties), their residences, and places of business.

2. The class of merchandise, and the particular description of the goods comprised in such class, by which the trade-mark has been or is intended to be appropriated.

3. A description of the trade-mark itself, with ten *fac-similes* thereof, and the mode in which it has been applied.

4. The length of time, during which the trade-mark has been in use.

5. The necessary funds, including the Government fee, \$25, our own fee, \$15. Total \$40.

The right to the use of any trade-mark is assignable by an instrument of writing, and such assignment must be recorded in the Patent Office within sixty days after its execution.

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PATENTS FOR LABELS AND PRINTS.

Prior to the year 1874, labels could be secured under the copyright law; but in that year the law was changed.

Labels and prints of all kinds for bottles, boxes and packages, for medicines, compounds, and every description of merchandise, may now be patented by registration in the Patent Office.

The Patent or registration so obtained, lasts for twenty-eight years, and may be then renewed for an additional period of fourteen years. It secures to the proprietor the exclusive right to use the registered label or print during the period named, and all persons who imitate the same will be liable to damages as infringers.

In order to obtain such registration, the applicant should give his full name, or the name of the firm and its members, and six copies of the label or print, with the fees, \$16, which cover all expenses. We then prepare the necessary papers which applicant must sign, and when duly registered we forward the official certificate to the applicant.

COPYRIGHT.

A copyright can be obtained by any person or persons being a citizen or citizens of the United States, or resident therein, being the author or authors of any book, map, chart, or musical composition, or who shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked from his own design, any print or engraving, and also by the executor, administrators, or assignees of such person or persons.

The term of the copyright is twenty-eight years from the time of recording the same.

Copyrights may be assigned; the assignment must be recorded by the Librarian of Congress.

Infringers of copyrights are subject to heavy fines and penalties.

Our charges for procuring a copyright are \$5, including Government fee.

Labels can no longer be copyrighted; such matter must now go to the Patent Office.

REJECTED CASES.

An application for a patent is very frequently rejected by the Patent Office, which, by proper management, would have been allowed and a Patent obtained. Some inventors prefer to prepare and prosecute their own applications, without the aid of experienced coun-

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sel; and when their application is informal, or is met by a reference to a prior Patent their application is *rejected*, a Patent is *refused*, and that is the end of it. Again, there are many so-called "patent lawyers" who undertake to obtain Patents for inventors, without being properly represented in the Patent Office in Washington. If a Patent is refused upon a reference which could be overcome by an amendment or disclaimer, or by an argument, they have not the facilities for examining, in the Patent Office, the reference cited by the examiner, nor for making the required alterations or arguments; and the result is, that they have to inform their client that his case has been "rejected." Now, we offer to examine, free of charge, all such rejected applications; and if, after a careful examination, we find that a patent may be obtained, we so inform our client, agree upon a fee, contingent upon success, and reopen the case. As a case which has been rejected and which then passes into the hands of an attorney is more difficult to prosecute and argue than a case that was carefully prepared in the first instance, our fee for the successful prosecution of a rejected application is graded according to the difficulties of the case and the amount of labor necessary to the achievement of a successful result.

As our fees in these cases are *conditional* entirely upon our success in obtaining the allowance, it is clear that it involves the inventor in *no expense whatever* should we fail in convincing the Office of the justice of his claim.

In order to examine your rejected case we must have a power of attorney. copy the following form in pen and ink and send to us.

Form for Power of Attorney.

To the Commissioner of Patents:

The undersigned, having on or about the — day of —, 18—, made application for Letters-Patent for an improvement in —, hereby revokes all former Powers of Attorney, and appoints Charles B. Mann, (of the firm of Mann & Co.,) Baltimore, Md., his attorney, with full power of substitution and revocation to prosecute said application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at — State of —, this — day of — 188—.
(Signature in full here.) — —.

WITNESS:

— — —
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Down to November 29th, 1881, it was the practice in the Patent Office to treat all applications which had been "allowed," and on which the final fee had not been paid, and no renewed application had been made, as *forfeited*.

In all such cases, as far as the applicant was concerned, *the invention was regarded as dead*. On the date named, a case was decided by the Commissioner of Patents which changed this practice, and now Patents may be obtained by filing a new application, no matter how much time has elapsed since a former application was "allowed."

We will undertake to procure patents in such cases.

EXTENSIONS.

Patents issued prior to March 2d, 1861, were granted for fourteen years, and the Commissioner could *extend* such Patents for seven years. The original term of such Patents having expired March 2, 1875, there will be *no more extensions*, except allowed by special act of Congress.

CANADA PATENTS.

The close proximity of Canada, with its large and rapidly growing population, makes Patents obtained there of special value.

Canada Patents are granted either for 5, 10 or 15 years, as the inventor desires.

5-year Patent,	total Gov. fee,	\$20;	Att's fee,	\$20—Total,	\$40.
10-year	"	"	"	40	20— 60.
15-year	"	"	"	60	20— 80.

A five or ten-year Patent can readily be extended to the full term of fifteen years.

The proceeding to obtain a Canada Patent is about the same as for U. S. Patents—the law being very similar.

Applicants must give full christian name (*middle name if any, included*), and state occupation. We do our business direct with the Canada Patent Office at Ottawa, Canada. Send model, charges prepaid, with full description, to

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BALTIMORE, MD.

FOREIGN PATENTS.

The patent systems of the various countries of Europe differ in so many essential respects, not only from that

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of the United States, but from each other, that although the applications for patents in those countries must be conducted by attorneys or solicitors in their respective capitals, it is necessary for all Americans intending to apply for European patent to first secure the advice and aid of thoroughly competent agents in this country, that their applications may be put in proper condition for transmission.

GREAT BRITAIN.

The British Patent covers the United Kingdom of Great Britain and Ireland, but none of the colonies; each colony making and administering its own patent laws. The Patent is always granted for fourteen years.

On the first of January, 1884, the expense of procuring British Patents was greatly reduced by law, and now the average cost of obtaining a British Patent is \$100, of which \$50 only is required in advance: the balance (\$50) being payable in three and a half months.

IN FRANCE the term is fifteen years, and the expense of obtaining, \$90.

IN BELGIUM the term is twenty years, and the expense of obtaining, \$90.

IN GERMANY the term is fifteen years, and the expense of obtaining \$100.

These patents give the inventor a monopoly of his discovery among the people of the leading manufacturing nations of the world.

DEATH OF THE INVENTOR.

In case of the death of the inventor, before applying for a Patent, the application may be made by, and the Patent when granted, will issue to his legal representative.

JOINT PATENTS.

Joint inventors are entitled to a joint patent; but neither inventor can claim a Patent separately.

INFRINGEMENT SEARCHES.

The question as to whether a device made according to one Patent infringes another lies at the basis of nearly all patent litigation, and its phases are as varied as the patents themselves. Each case rests upon its own

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peculiarities. The scope of any Patent is governed by the inventions of prior date, and the question if an infringement exists can only be determined by a careful study of analogous prior patents. An opinion based upon such search and study, requires therefore, for its preparation, much time and labor.

Having access to all the original patents, models, drawings, public records, and all other accessible documents pertaining to the Patent Office, we are prepared to make examinations and give written and carefully prepared opinions upon all infringement questions, together with a description and digest of other patents having a bearing upon the case, upon *moderate terms*.

VARIOUS ITEMS.

Having daily access to the library, record, models, etc., of the Patent Office, we possess every facility for obtaining any kind of information concerning inventions, patents, rejected applications, or business of any kind pending before the office.

Copies of Patents furnished at Patent Office prices, any patent since January 1st, 1866, 25 cents.

Patent Office Record of Transfers examined to determine the validity of title of any patent for \$2.

Special advice or opinion on any question of patent law, or any business matter relating to patents, from \$1 to \$5, according to nature and extent of inquiry.

SPECIAL INFORMATION.

We are prepared to assist persons in pursuit of information on any special subject relating to engineering, mechanical or scientific matters. We have access to the splendid library and records of the Patent Office, and besides this we have in our own private library many of the latest and best works on applied mechanics, the industrial arts and manufactures, and also have direct and ready access to the famous library of the Peabody Institute in this city. This Institute has an endowment of several million dollars, and is one of the most complete reference libraries for scientific subjects in the world. We possess, therefore, superior facilities for obtaining any kind of information concerning inventions, or the "state of the art" in any class of manufacture.

We will endeavor to procure any desired information, and in some cases, we can furnish printed articles bearing on the very subject inquired about. Thus we are

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frequently able to afford to inventors great assistance in perfecting their plans. Our charge for such services, ordinarily, is from \$1 to \$5; but may be more where extended research is necessary.

MANNER OF TRANSACTING PATENT OFFICE BUSINESS.

We transact our business chiefly by personal interviews with the officials of the Patent Office; we have every facility that is afforded to any one for the conduct of our cases. We can and do make personal explanations and argue the cases of our clients in a manner much more effective than is possible where the business is transacted wholly by correspondence, or by an associate attorney who knows but little about the case, as must be done by solicitors who reside at a distance from Washington.

"DELAYS ARE DANGEROUS."

Many an inventor regrets his delay in applying for a Patent. Among so many persons engaged in inventing, there is certainly always a risk that some one may perfect an invention already begun by another inventor, and apply for and obtain a Patent. The only safe course after making an invention *is to apply for a Patent or file a Caveat AT ONCE.*

WE SELL BLANKS FOR PATENT OWNERS.

We publish and keep on hand all the various kinds of blanks needed by Patentees, such as Deeds, Shop-Rights, Contract with Manufacturers for Royalty, etc., which are all handsomely printed on best quality law-cap paper. These ready-printed blanks we sell by the dozen or in any quantity.



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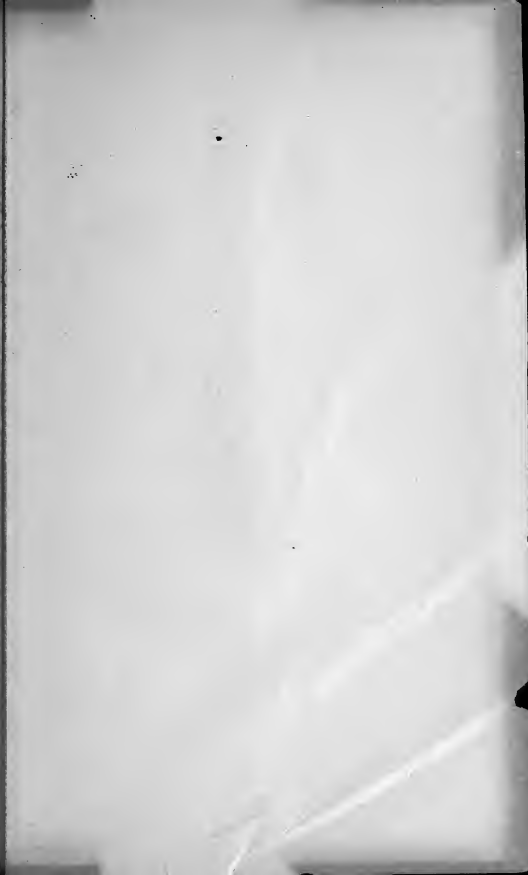
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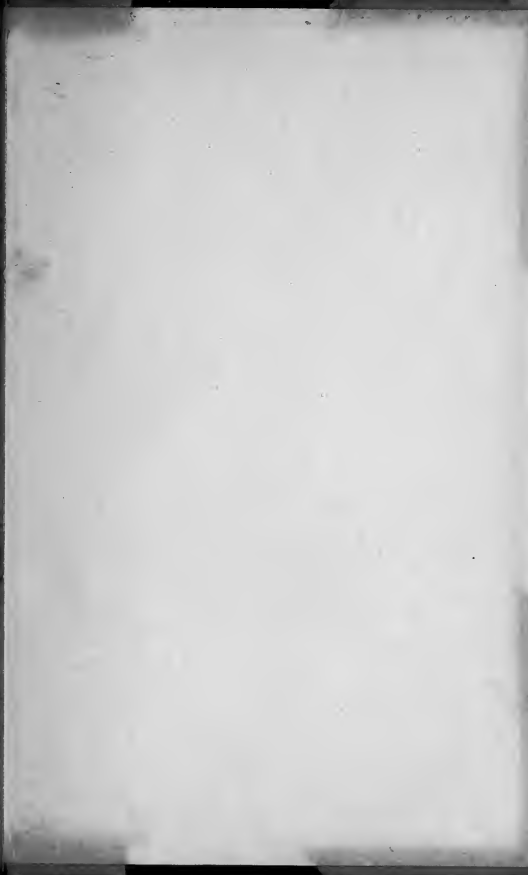
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